(24,447)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY, PETITIONER,

vs.

EFFIE J. GOULD DUNLEVY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a Original.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

1 *Names and Addresses of Attorneys.*

Messrs. McCutchen, Olney & Willard, Attorneys for Defendant and Plaintiff in Error, Merchants' Exchange Building, San Francisco, Cal.

Frank W. Taft, Clarence Coonan & Nat Schmulowitz, Esqrs., Attorneys for Plaintiff and Defendant in Error, Merchants' National Bank Building, San Francisco, Cal.

In the Superior Court of the State of California in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH A. GOULD, Defendants.

Complaint.

Plaintiff for cause of action alleges:

1. That the defendant, the New York Life Insurance Company, is a corporation, organized and existing under and by virtue of the laws of the State of New York and doing business in the State of California, and has filed in the office of the Secretary of State of the State of California the designation of the person upon whom service of summons may be had; that such person is J. H. Gray,
2 located at the Union Trust Building, corner of Market and Montgomery Street, San Francisco, Cal.

2. That the defendant Joseph W. Gould is the father of the plaintiff herein.

3. That on or about the 22d day of January, A. D. 1889, the defendant, the New York Life Insurance Company, issued a policy upon the life of the defendant Joseph W. Gould, which said policy

was numbered 305,011, and among other things provided that said policy at the expiration of twenty years would have a cash surrender value; that all of the terms and provisions of said policy agreed to be performed by the said Joseph W. Gould have been fully performed and discharged; that under and by virtue of the terms and provisions of said policy there became due and was due on January 22d, 1909, and is now due from said New York Life Insurance Company the sum of $2,479.70. (1*)

4. That on or about the 27th day of June, A. D. 1893, when the plaintiff herein was thirteen years of age, the defendant Joseph W. Gould made and executed a certain instrument in writing which was and is in words and figures following, to wit:

"For value received I hereby assign and transfer unto Effie J. Gould, of Pittsburgh, Pa., the Policy of Insurance known as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould, of Pittsburgh Pa., and all dividend, benefit, and advantage to be had or derived therefrom, subject to the conditions of the said Policy, and to the Rules and Regu-
3 lations of the Company.

Witness my hand and seal this 27th day of June, One Thousand Eighteen Hundred and Ninety-three.

(Signed) JOSEPH W. GOULD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me, personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Signed) HENRY C. RYAN,
Notary Public.

The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

(Signed) JOHN A. McCALL, *Pres.*,
Per E. LAWES.

New York, June 30th, 1893.

NOTICE.—The rules of the Company require that Assignments of Policies issued by it shall be made in duplicate; that both copies shall be sent to the Home Office; and that one copy shall be retained by the Company and the other returned. (2)

The Company has no responsibility for the validity of any assignment.

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* Page number appearing at foot of page of original certified Record.

The acknowledgment must be made before an Officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the Clerk of a Court of Record, under his official seal.

4 Forwarded from — Branch Office, —, 19—.

—— ——, *Cashier.*"

—and delivered the same to the New York Life Insurance Company, and on the 30th day of June, 1893, the said New York Life Insurance Company made and executed a certain instrument in writing in words and figures following:

"STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me, personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

(Signed) HENRY C. RYAN,
Notary Public.

The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

(Signed) JOHN A. McCALL, *Pres.,*
Per E. LAWES."

5. That Effie J. Gould named in the foregoing instrument is the plaintiff herein.

6. That the said sum of $2,479.70 has never been paid and the same is now due and payable from the defendant the New York Life Insurance Company to the plaintiff herein.

7. That the said original policy, # 305,011, is now in the possession of the defendant Joseph W. Gould and the duplicate
5 of the instruments set forth in paragraph 4 hereof are now in the possession of the defendant Joseph W. Gould, and he claims a right to the proceeds of said policy, viz., the said sum of $2,479.70, but such claim is without any right whatsoever.

8. That both defendants are now residents of the (3) State of California and plaintiff hereby designates the County of Marin as the proper place of trial of this action.

Wherefore plaintiff prays judgment against the defendant, the New York Life Insurance Company, for the sum of $2,479.70, with interest thereon at the rate of 7% per annum from the 22d day of January, A. D. 1909, to the date of judgment, and for costs of suit and for judgment against the defendant, Joseph W. Gould, to the effect that he be barred from participating in the said sum of $2,-479.70 or any part or portion thereof, and for costs of suit.

FRANK W. TAFT,
Attorney for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Effie J. Gould Dunlevy, being first duly sworn, deposes and says that she is the plaintiff in the foregoing complaint; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to those matters therein stated on her information and belief and as to those matters that she believes it to be true.

EFFIE J. GOULD DUNLEVY.

6 Subscribed and sworn to before me this 12th day of January, 1910.

OLIVER DIBBLE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] Filed Jan. 14, 1910. Rob. E. Graham, Clerk, by F. S. Holland, Deputy. (4)

In the Superior Court of the State of California in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Petition for Removal.

Petition for Removal of Cause from the Above-entitled Court of the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

To the Honorable the Superior Court of the County of Marin, State of California:

Your petitioner, the New York Life Insurance Company, a corporation, respectfully shows to this Court:

That it is one of the defendants in the above-entitled action, and that said action is of a civil nature;

7 That the matter and amount in dispute in said action exceeds the sum or value of Two Thousand (2,000) Dollars, exclusive of interest and costs.

That your petitioner, New York Life Insurance Company, a Corporation, was at the time of the commencement of said action, and still is a citizen and resident of the State of New York, and was at the time of the commencement of said action, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and having its principal office and place of business in the City of New York in said State, and was at the time of the commencement of said action, and still is, nonresident of the

State of California; that the plaintiff Effie J. Gould Dunlevy was (5) at the time of the commencement of said action, and still is a citizen and resident of the State of California, Northern District thereof;

That your petitioner is informed and believes, and upon such information and belief alleges, that defendant Joseph W. Gould is wrongfully joined as a party defendant with the said defendant New York Life Insurance Company, a corporation, for the sole and express purpose of defeating the jurisdiction of the United States Circuit Court, Ninth Circuit, in and for the Northern District of California; that defendant Joseph W. Gould is a nonresident of the State of California, and your petitioner is informed and believes, and upon such information and belief alleges, that he was at the time of the commencement of said action, ever since has been and now is a resident of the State of Pennsylvania, and your petitioner
8 is further informed and believes, and upon such information and belief alleges, that said defendant Joseph W. Gould has not been served with the summons in said action, and that plaintiff does not intend to serve said defendant with said summons in said action nor proceed against him therein; that plaintiff well knew that she would be unable to serve said defendant Joseph W. Gould with the said summons in said action or acquire jurisdiction of him therein, and that she will be compelled to prosecute her suit against your petitioner New York Life Insurance Company alone.

That in and by plaintiff's complaint in said action it is alleged that said defendant Joseph W. Gould has no interest in the amount claimed therein to be due plaintiff from said defendant New York Life Insurance Company; that even if said defendant Joseph W. Gould were a necessary or indispensable party to this controversy, the proceeding is a severable one as between defendant Joseph W. Gould and New York Life Insurance Company, and is a controversy which is wholly between (6) citizens of different States, and which can be fully determined as between plaintiff Effie J. Gould Dunlevy and your petitioner, New York Life Insurance Company, as by a reference to the complaint in said action will more fully appear.

That in and by said complaint plaintiff claims to be the assignee of a certain policy of life insurance by the New York Life Insurance Company, your petitioner, in favor of Joseph W. Gould named as a defendant in said complaint, and plaintiff thereby seeks to
9 recover the contents of said policy of life insurance; that such suit might have been prosecuted in the United States Circuit Court for the Western District of Pennsylvania by said Joseph W. Gould, plaintiff's assignor, or if originally brought in a court of said State of Pennsylvania said action could have been removed by your petitioner to said Circuit Court last hereinbefore referred to.

That there is in said action a controversy which is wholly between citizens of different States, and is between them alone, and which can be fully determined as to them, namely, a controversy between your said petitioner, New York Life Insurance Company, a corporation, and the plaintiff, Effie J. Gould Dunlevy.

That your petitioner offers herewith a bond with good and sufficient security for its entering in the said Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, on the first day of its next session, a copy of the record in this action, and for the payment of all costs that may be awarded by said Circuit Court, if said Court shall hold that this action was wrongfully or improperly removed thereto.

Your petitioner therefore prays this Honorable Court to proceed no further herein, except to make the order of (7) said removal, as required by law, and to accept said bond and surety and cause the record herein to be removed into said Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California;

10 And your petitioner will ever pray, etc.

NEW YORK LIFE INSURANCE COMPANY,
By J. H. GRAY,
Petitioner, Cashier and General Agent.
PAGE, McCUTCHEN & KNIGHT,
Attorneys for Petitioner. (8)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

J. H. Gray, being first duly sworn, deposes and says:

That he is an officer, to wit, the cashier of the San Francisco Clearing Office of the New York Life Insurance Company, a corporation, the petitioner herein and one of the defendants in the above-entitled action, and an agent of said New York Life Insurance Company, and that he makes this affidavit on behalf of said petitioner and said defendant. That the foregoing petition is true as to his own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

[SEAL.] J. H. GRAY.

Subscribed and sworn to before me this 16th day of February, 1910.

HENRY P. TRICOU,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed:] Filed Feby. 16th, 1910. Rob. E. Graham, Clerk. (9)

11 In the Superior Court of the State of California, in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH A. GOULD, Defendants.

Order for Removal.

Defendant herein, New York Life Insurance Company, a corporation, having, within the time provided by law, filed its petition for removal of this cause to the Circuit Court of the United States, Ninth Circuit, for the Northern District of California, and at the same time offered its bond in the sum of five hundred (500) dollars, with good and sufficient surety, pursuant to statute, and conditioned according to law;

Now, therefore, this Court does hereby accept and approve said bond and accept said petition and does order that this cause be removed for further proceedings therein to the next Circuit Court of the United States, Ninth Circuit, for the Northern District of California, pursuant to the statutes of the United States, and that all proceedings of this court be stayed.

Dated: February 16th, 1910.

THOS. J. LENNON, *Judge.*

[Endorsed:] Filed Feby. 16th, 1910. Rob. E. Graham, Clerk. (10)

12 In the Superior Court of the State of California, County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH A. GOULD, Defendants.

Bond [on Removal].

Know all men by these presents: That Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and duly authorized and qualified under and by virtue of the laws of the State of California to become sole surety in all cases where an undertaking or bond with any number of sureties is authorized, or required by the laws of the State of California; as party of the first part, is held and firmly bound unto Effie J. Gould Dunlevy, as party of the second part, in the sum of five hundred (500) dollars, gold coin of the United States, for the payment whereof, well and truly to be made unto the party of the second part, *well and truly to be made*

unto the party of the second part, her heirs, executors, and assigns, the said party of the first part binds itself, its successors and assigns by these presents.

Nevertheless, upon these conditions:

That, whereas, the above-named New York Life Insurance
13 Company, a corporation, has petitioned the Superior Court of the County of Marin, State of California, for the removal of a certain cause pending therein, wherein the said party of the second part is plaintiff, and the said New York Life Insurance Company, a corporation, is one of the defendants, to the Circuit Court of the United States, Ninth Circuit, Northern (11) District of California.

Now, therefore, if the said New York Life Insurance Company, a corporation, shall enter in the said Circuit Court of the United States on or before the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said Circuit Court of the United States, if such Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, Fidelity and Deposit Company of Maryland has caused these presents to be subscribed with its corporate name and its corporate seal affixed by its duly authorized attorney in fact at San Francisco, California, this 16th day of February, 1910.

[SEAL.] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By JAMES W. MOYLES,
Attorney in Fact.

The within bond is hereby accepted and approved this 16th day of February, 1910.

THOS. J. LENNON, *Judge.*

14 [Endorsed:] Filed Feb'y 16, 1900. Rob. E. Graham, Clerk. (12) Received by F. A. G. Feb. 16, 1910. Examined by F. A. G. From —.

In the Superior Court of the State of California, in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH A. GOULD, Defendants.

Demurrer.

Comes now the defendant New York Life Insurance Company, and demurs to the complaint of the plaintiff on file herein, and for grounds of demurrer alleges:

I.

That said complaint does not state facts sufficient to constitute a cause of action against this defendant New York Life Insurance

II.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom whether the assignment therein mentioned was ever delivered to the plaintiff herein.

15 III.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, whether said assignment was ever delivered to a person other than the plaintiff herein, for or on behalf of the said plaintiff, or for her benefit.

IV.

That said complaint is uncertain in this, that it (13) does not appear therein, nor can it be ascertained therefrom, that said assignment was delivered to the New York Life Insurance Company, or that the defendant New York Life Insurance Company ever received delivery of the said assignment for or on behalf of plaintiff.

V.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, whether the defendant New York Life Insurance Company was bound by the said assignment or was obligated to recognize the said assignment, or that plaintiff has or ever did succeed to the interest of defendant Joseph W. Gould in said policy.

VI.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, to whom the said policy was payable, or to whom the proceeds of said policy were payable.

VII.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, who was the
16 beneficiary named in said policy, or to whom the proceeds of said policy were payable, as such beneficiary.

VIII.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, particularly in para-

graph III thereof, whether the sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars therein mentioned, was or is the cash surrender value of said policy.

IX.

That said complaint is uncertain in this, that it (14) does not appear therein, nor can it be ascertained therefrom, particularly in paragraph III thereof, whether the plaintiff herein has performed all or any of the terms and provisions of the said policy on her part to be performed, or whether any of the terms, conditions or provisions of said policy have been performed, other than those to be performed by Joseph W. Gould.

X.

That said complaint is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom, whether or not the sum in said complaint mentioned was not paid to the defendant Joseph W. Gould.

XI.

That said complaint is ambiguous for the same reasons and in the same respects as it is hereinabove alleged to be uncertain.

XII.

That said complaint is unintelligible for the same reasons
17 and in the same respects as it is hereinabove alleged to be uncertain.

Wherefore, this defendant, New York Life Insurance Company, prays to be hence dismissed, with its costs of suit.

PAGE, McCUTCHEN & KNIGHT,
Attorneys for said Defendant.

[Endorsed:] Filed Feb'y 16th, 1910. Rob. E. Graham, Clerk.
(15)

In the Superior Court of the State of California, in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Admission of Service of Demurrer to Complaint.

I hereby admit service and acknowledge receipt of a copy, this 16th day of February, 1910, of the demurrer of defendant New York Life Insurance Company to plaintiff's complaint, which said de-

murrer was filed in the above-entitled court on said 16th day of February, 1910.

FRANK W. TAFT,
Attorney for Plaintiff.

[Endorsed:] Filed Feb'y 23, 1910. Rob. E. Graham, Clerk. (16)

18 In the Superior Court of the State of California in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Affidavit of Joseph W. Gould.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Joseph W. Gould, named in said action "Joseph A. Gould," being duly sworn according to law, deposes and says that he is advised that he is not required to answer the complaint filed in the above-stated action, for the reason that prior to the institution thereof a suit had been brought in the Court of Common Pleas No. Four of Allegheny County, State of Pennsylvania, requiring him and the said Effie J. Dunlevy and others to interplead for the purpose of ascertaining to which said parties the money in the hands of the New York Life Insurance Company belongs, in which action this deponent appeared and made answer prior to the bringing of the above stated action. Deponent denies the right of this Honorable Court to proceed further in the above-stated action or to require him to appear therein and defend therein until the determination of the action in the Court of Common Pleas No. Four of Allegheny County, Pennsylvania.

19 And he is further advised to file the following answer under protest and only for the purpose of preventing judgment against him in default, and in filing said answer he does not submit himself to the jurisdiction of this court denying its right to proceed further until the determination of the action in Pennsylvania above stated. Subject to the above objection, and denying the jurisdiction of this court, deponent makes answer to the complaint heretofore filed, and says: (17)

That on the 24th day of January, 1889, the New York Life Insurance Company issued on deponent's life its policy No. 305,011, in the sum of Five Thousand Dollars $5,000, wherein said company agreed to pay to his executors, administrators or assigns, the sum of Five Thousand Dollars $5,000, upon receipt and approval at said office of proofs of his death during the continuance of said policy, after deducting therefrom all indebtedness of said company, together with any balance of premiums remaining unpaid; and the said policy provided, inter alia, "for the distribution of certain

benefits to the insured at the termination of the tontine period named therein," which benefits were in the form of a cash surrender value amounting to the sum of twenty-four hundred and seventy-nine dollars and seventy cents, $2,479.70. On or about June 27th, 1893, being desirous of assigning said policy conditionally to his daughter, Effie J. Gould, now intermarried with R. M. Dunlevy, deponent called at the office of the New York Life Insurance Company, in the city of Pittsburgh, Allegheny County, Pennsylvania, and requested R. H. McCreary, the agent there in charge of said office, to
20 have said policy assigned to deponent's daughter, the said Effie J. Gould, now Dunlevy, on condition that he should die before said policy was paid in full, or before the tontine period therein was terminated, desiring to reserve to himself the right to collect any money to be paid on said policy at the termination of the tontine period named therein if deponent should so long live. The agent of said company, the said R. H. McCreary, had said assignment prepared and deponent signed the same on said McCreary's assertion that it was an assignment to deponent's said daughter of the said policy only on the condition that deponent should die before the maturity of said policy or before the termination of the tontine period named therein. Deponent did not read the assignment before executing the same, relying on the statement of the said McCreary, the agent of said company, that he (18) was assigning it conditionally in the manner hereinbefore stated. Deponent had no intention of making an absolute assignment of said policy such as appears to have been made to his daughter, Effie J. Dunlevy, or to any other person. That neither the said policy nor the assignment thereof was ever delivered to the said Effie J. Gould, now Dunlevy, to whom it was assigned, but both said policy and the assignment thereof have always been and are now in the possession of deponent, and deponent has paid all premiums maturing on said policy since said assignment, and at maturity or the termination of the tontine period therein named he supposed that he would have no difficulty
21 in collecting the amount of the surrender value of said policy, but was met with said assignment.

On September 9th, 1909, deponent notified said New York Life Insurance Company not to pay any moneys due thereon unto the said Effie J. Dunlevy, or to any person or persons representing her. Deponent denies that said Effie J. Gould, now Dunlevy, has any interest in said policy, and avers that whatever there is due thereon at the present time belongs to deponent and not to the said Effie J. Gould, now Dunlevy. Deponent avers that he would not have executed said assignment had he not been informed by said McCreary, the agent of said company, that he was making a conditional assignment of said policy, and that the same was to be effective in case of deponent's death only before the maturity thereof or the termination of the tontine period named therein, and to be void in case deponent should be living at the time *of* the premiums of said policy should be paid in full and at the termination of the tontine period named therein.

Deponent further avers that the said Effie J. Gould, now Dunlevy, had no knowledge whatever of the assignment of said policy to her by this deponent until so notified by the said New York Life Insurance Company after the termination of the said tontine period named therein. And deponent further avers that the said New York Life Insurance Company knew or ought to have known through its (19) agent at Pittsburgh, Pennsylvania, the said R. H. McCreary, that said policy was assigned to his daughter, the said Effie J. Gould,
22 now Dunlevy, on condition that if deponent should die before maturity thereof, that said assignment was to be an absolute one, otherwise the surrender value of said policy was to be paid to deponent in case he was living at the termination of the tontine period named therein, and avers that he was misled by said company's agent in making of said absolute assignment; and further avers that neither said policy nor the assignment thereof has been at any time since the issuing of said policy and the making of said assignment in the possession of the said Effie J. Gould, now Dunlevy, but that the said policy and the said assignment have always remained in the possession of deponent. And he denies that the said Effie J. Gould, now Dunlevy, ever paid any consideration to deponent for the assignment thereof; and avers that said assignment was made only for the purpose of protection to the said Effie J. Gould, now Dunlevy, in case of deponent's death before the maturity of said policy or the termination of the tontine period named therein.

By reason of the matters hereinbefore set forth, deponent avers that he is entitled to have the surrender value of said policy paid to him in full, to wit, the sum of $2,479.70, and that no part of said sum should be paid to the said Effie J. Gould, now Dunlevy.

JOSEPH W. GOULD.

Sworn to and subscribed before me this 28th day of February, 1910.

[SEAL.] MAY E. NUNEZ,
Notary Public in and for the City and County of Los Angeles, State of California.

23 [Endorsed:] Filed March 2d, 1910. Rob. E. Graham, Clerk. (20)

[*Certificate of Clerk to Transcript of Record on Removal.*]

OFFICE OF THE COUNTY CLERK
Of the County of Marin, State of California, ss:

I, Robert E. Graham, County Clerk of the County of Marin and State aforesaid, and ex-officio Clerk of the Superior Court thereof, do hereby certify that I have compared the foregoing Transcript of Record on removal of cause, entitled Effie J. Gould Dunlevy vs. New York Life Insurance Co., a Corporation, et al., and of the endorsements thereupon, with the original record of the same remaining in this office, and that the same is a correct copy thereof, and of the whole of said original record.

Witness my hand and the seal of said court this 3d day of March, 1910.

[SEAL.] ROBT. E. GRAHAM, *Clerk*,
By F. S. HOLLAND,
Deputy Clerk.

[Endorsed:] Filed Mar. 7, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. (21)

24 [*Return of Sheriff on Summons.*]

Office of the Sheriff of Los Angeles County, Cal.

I hereby certify that I received the within Summons on the 18th day of January, A. D. 1910, and personally served the same on the 7th day of February, A. D. 1910, on Joseph A. Gould, whose real name is Joseph W. Gould, being one of the defendants named in said Summons, by delivering to said defendant personally in the said County of Los Angeles, a copy of said Summons, and a copy of the Complaint in the action named in said Summons, attached to said copy of Summons.

Dated this 7th day of February, A. D. 1910.

W. A. HAMMEL, *Sheriff*,
By M. H. PRITCHARD,
Deputy Sheriff. (22)

In the Superior Court of the State of California in and for the County of Marin.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH A. GOULD, Defendants.

25 Action Brought in the Superior Court in and for the County of Marin, State of California, and the Complaint Filed in the Office of the Clerk of said County.

F. W. Taft, plaintiff's attorney.

Summons.

The People of the State of California Send Greeting to New York Life Insurance Company, a Corporation, and Joseph A. Gould, Defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the Superior Court, in and for the County of Marin, State of California, and to answer the complaint filed therein, within ten days (exclusive of the day of service), after the service on you of this Summons, if served within this county; or if served elsewhere, within thirty days.

And you are hereby notified that if you fail to appear and answer the said Complaint, as above required, the said plaintiff will take judgment for any money or damages demanded in the Complaint as arising upon contract, or will apply to the Court for any other relief demanded in the complaint.

Given under my hand and the Seal of the Superior Court, in and for the County of Marin, State of California, this 14th day of January, in the year of our Lord, one thousand nine hundred and ten. (23)

[SEAL.] ROBT. E. GRAHAM, *Clerk,*
By F. S. HOLLAND,
Deputy Clerk.

26 [Endorsed:] Filed Apr. 25, 1910. Southard Hoffman, Clerk. By J. A. Schaertzer, Deputy Clerk. (24)

At a stated term, to wit, the March term, A. D. 1910, of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Northern District of California, held at the courtroom in the City and County of San Francisco on Monday, the 14th day of March, in the year of our Lord one thousand nine hundred and ten.

Present: The Honorable William C. Van Fleet, District Judge.

No. 15041.

EFFIE J. GOULD DUNLEVY
vs.
NEW YORK LIFE INS. Co. et al.

Order Sustaining Defendants' Demurrer.

Defendants' demurrer to the complaint herein came on this day to be heard, and being confessed by attorney for plaintiff, it was ordered that said demurrer be and the same is hereby sustained, with leave to plaintiff to amend within 10 days. (25)

At a stated term, to wit, the March term, A. D. 1910, of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Northern District of California, held at the courtroom in the City and County of San Francisco on
27 Monday, the 21st day of March, in the year of our Lord one thousand nine hundred and ten.

Present: The Honorable William C. Van Fleet, District Judge.

No. 15041.

EFFIE J. GOULD DUNLEVY
vs.
NEW YORK LIFE INSURANCE CO. et al.

Order Setting Aside Order of March 14, 1910, and Order Overruling Demurrer.

Upon motion of Frank W. Taft, Esq., attorney for plaintiff, and by consent of attorneys for defendants, it was ordered that the order entered March 14, 1910, sustaining defendants' demurrer, be and the same is hereby set aside. Thereupon defendants' demurrer to the complaint herein was submitted to the Court and it was ordered that said demurrer be and the same is hereby overruled. (26)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Answer of Defendant New York Life Insurance Company, a Corporation.

Comes now the New York Life Insurance Company, one of
28 the defendants above named, and answering the complaint of the plaintiff on file herein;

Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations in paragraph two (II) of said complaint, and basing its denial upon that ground denies that defendant Joseph W. Gould is the father of the plaintiff herein.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations in paragraph four (IV) of said complaint, and basing its denial upon that ground denies that on or about the 27th day of June, 1903, or at any other time, defendant Joseph W. Gould made and executed, or made or executed, that certain instrument in writing set forth in hæc verba in said complaint on page two (2) thereof;

Admits that this defendant did on the 30th day of June, 1893, receive a paper in the words and figures as set forth in the said complaint, paragraph four (4) thereof, purporting to have been executed by the defendant Joseph W. Gould. (27)

Alleges that it has no information or belief upon the subject sufficient to enable it to deny the allegations in paragraph five (5) of said complaint, and basing its denial upon that ground denies that the Effie J. Gould, named in the instrument mentioned and described in said complaint, is the plaintiff herein.

Denies that the sum of twenty-four hundred and seventy-nine and 70/100ths ($2,479.70) dollars, is now, or ever or at all was, due and payable, or due or payable, from this defendant to the plaintiff herein.

Alleges that it has no information or belief upon the subject sufficient to enable it to deny the allegations in paragraph seven (7) of said complaint, and basing its denial upon that ground denies that the original policy mentioned in said complaint is now, or ever at all was, in the possession of the defendant Joseph W. Gould, or that the duplicate of the instruments, or any thereof, mentioned in the said complaint, paragraph four (IV) thereof, are now or ever at all were in the possession of the defendant Joseph W. Gould.

Admits that defendant Joseph W. Gould claims a right to the proceeds of the said policy, to wit, the sum of twenty-four hundred and seventy-nine and 70/100ths ($2,479.70) dollars, but denies that such claim was or is without any right whatsoever.

Further answering said complaint this defendant alleges that on or about the 24th day of January, A. D. 1889, this defendant executed and delivered to the defendant Joseph W. Gould a policy upon the life of said defendant, which said policy was numbered 305,011. That prior to the commencement of this action there became due and payable, under and by virtue of the terms of said policy, the sum of twenty-four hundred and seventy-nine and 70/100ths ($2,479.70) (28) dollars; that prior to the commencement of this action and on or about the 25th day of August, 1909, defendant Joseph W. Gould notified this defendant that he claimed an interest in the proceeds of the said policy, and that none of the proceeds thereof were to be paid to the plaintiff herein or to any person claiming under her.

That prior to the commencement of this action and prior to the 10th day of November, 1909, there was commenced in the Court of Common Pleas, of the County of Allegheny, Commonwealth of Pennsylvania, an action for the recovery of money or property against the plaintiff herein, which said action is entitled,

Boggs & Buhl vs. Effie J. Dunlevy.

That on said 10th day of November, 1909, there was issued out of said court, under and by virtue of the laws of said State of Pennsylvania, a writ of garnishment, which said writ of garnishment was duly and regularly served upon his defendant, commanding and directing it to withhold from the plaintiff herein all moneys or other property in its possession belonging to, owned by, or owing to her.

That thereafter and prior hereto, the exact time whereof is to this defendant unknown, there were commenced in said Court of Common Pleas, said County of Allegheny, said State of Pennsylvania, numerous other actions at law for the recovery of money or other property against the plaintiff herein named, among which were the following:

Lincoln National Bank of Pittsburgh, a Corporation, Plaintiff, vs. Effie J. Dunlevy, Defendant.

Charles Elsto, Plaintiff, vs. Effie J. Dunlevy, Defendant.

That in said last-mentioned actions, and each of them,
31 there were issued out of said court, under and by virtue of the laws of said State of Pennsylvania, writs of garnishment, which said writs of garnishment were duly and regularly served on (29) this defendant, commanding and directing it to with-old from the plaintiff herein all monies or other property in its possession belonging to, owned by, or due to her.

That plaintiff and defendant Joseph W. Gould have, and each of them has, appeared in said action of Boggs & Buhl vs. Dunlevy, and have therein set up their respective rights in and to the said policy of insurance and the proceeds thereof and in and to said sum of twenty-four hundred and seventy-nine and 70/100ths ($2479.70) dollars. That the said Court of Common Pleas, in the said County of Allegheny, Commonwealth of Pennsylvania, in said action of Boggs & Buhl vs. Dunlevy, has jurisdiction to try and determine the respective rights of all the parties hereto.

That prior hereto the said Court of Common Pleas in the County of Allegheny, Commonwealth of Pennsylvania, by its order duly given and made in the said action of Boggs & Buhl vs. Dunlevy, ordered this defendant to pay into said court said sum of twenty-four hundred and seventy-nine and 70/100ths ($2479.70) dollars.

That thereupon and pursuant to said order this defendant paid into said court said sum of twenty-four hundred and seventy-nine and 70/100ths ($2479.70) dollars, there to wait the determination of said court as to its disposition.

Wherefore this defendant prays to be hence dismissed
32 with its costs of that this action abate pending the determination of said action of Boggs & Buhl vs. Dunlevy.

PAGE, McCUTCHEN & KNIGHT,
Attorneys for Defendant. (30)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Arthur Hutchinson, being first duly sworn, says: That he is an officer, to wit, cashier, of New York Life Insurance Company, a corporation, one of the defendants above named; that he makes this verification for and in its behalf; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

ARTHUR HUTCHINSON, *Cashier.*

Subscribed and sworn to before me this 31st day of March, 1910.

[SEAL.]

M. D. BROWN,
Notary Public for the City and County of San Francisco, State of California.

It is hereby stipulated by plaintiff that the within verification is sufficient and that all further verification thereof is waived.

FRANK W. TAFT,
Attorney for Plaintiff.

Service of the within answer of defendant and receipt of
33 a copy is hereby admitted this 31st day of March, 1910.

FRANK W. TAFT,
Attorney for Plaintiff.

[Endorsed:] Filed Apr. 1, 1910. Southard Hoffman, Clerk. J. A. Schaertzer, Deputy Clerk. (31)

In the Circuit Court of the United States for the Northern District of California.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Amended Answer.

Comes now New York Life Insurance Company, a corporation, one of the defendants above named, and as of course files this, its amended answer, and answering the complaint of plaintiff on file herein, admits, denies and alleges, as follows:

Admits that this defendant issued its policy of insurance in form and in effect as alleged in paragraph 3 of the complaint herein, but denies that there is now due from this defendant the sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars, or any sum. Denies that the sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars has never been paid, and that the same is now, or ever or at all was, due and
34 payable, or due or payable, from this defendant to the plaintiff, or that said sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars has never been paid, or that the same is now, or ever or at all was, due and payable, or due or payable, from this defendant to plaintiff. Denies that the claim of defendant Joseph W. Gould to the said sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars is without any right whatsoever.

And for a second and separate defense, this defendant alleges: (32)

That on or about the 24th day of January, 1889, this defendant entered into a contract with defendant Gould, as evidenced by its policy number 305,011, then and there duly made and delivered to said defendant Gould, by the terms of which this defendant undertook to and did insure the life of said defendant Gould for the sum of five thousand (5,000) dollars, payable at the Home Office of this defendant in the city of New York, to the insured's executors, administrators or assigns upon receipt and approval at said Home Office of proofs, as therein required, of the death, during the continuance of said policy, of said insured; that said policy was written on the ordinary life nonforfeiting limited tontine plan, and further provided that if said insured should be living at the completion of the tontine period therein named, namely, on the

22d day of January, 1909, and said policy should then be in force, said insured would be entitled to a choice of certain benefits therein stated, it being understood and agreed that not less than
35 three (3) months prior to the termination of said tontine period, said insured should notify this defendant, in writing, which of said benefits was selected, and if no such notification should be received by this defendant, then the surplus should be applied to an annuity in one of the forms stipulated in the "First Benefit" named therein. That a copy of said policy is set forth in Exhibit "A," hereunto annexed, and said policy is hereby referred to and made a part hereof.

That this defendant is informed and believes, and upon such information and belief alleges, that on or about the 27th day of June, 1893, defendant Gould, being desirous of assigning said policy conditionally to his daughter, the plaintiff herein, provided he should die prior to the completion of the tontine period above mentioned, thereupon made, executed and delivered to this defendant the instrument, a copy whereof is set forth in paragraph 4 of the plaintiff's complaint herein. Upon the same (33) ground this defendant alleges that said instrument was made on condition that if said defendant Gould should be alive at the time of the completion of the tontine period under the said policy, namely, on the 22d day of January, 1909, he would be entitled to the proceeds of the said policy, and it was made with no intention of making an absolute assignment of the said policy to the plaintiff herein, or to any other person; that neither said policy nor said assignment was ever delivered to the plaintiff, but said policy has always and up to the time of the payment of the proceeds thereof, as hereinafter mentioned, remained in the possession of said defendant Gould and said defendant
36 Gould paid all premiums on the said policy; that said assignment was delivered to this defendant in conformity with this defendant's rules, and not otherwise.

And for a third and separate defense, this defendant alleges:

That on or about the 24th day of January, 1889, this defendant entered into a contract with defendant Gould, as evidence by its policy number 305,011, then and there duly made and delivered to said defendant Gould, by the terms of which this defendant undertook to and did insure the life of said defendant Gould for the sum of five thousand (5,000) dollars, payable at the Home Office of this defendant in the City of New York, to the insured's executors, administrators or assigns upon receipt and approval at said Home Office of proofs, as therein required, of the death, during the continuance of said policy, of said insured; that said policy was written on the ordinary life nonforfeiting limited tontine plan, and further provided that if said insured should be living at the completion of the tontine period therein named, namely, on the 22d day of January, 1909, and said policy should then be in force, said insured would be entitled to a choice of certain benefits therein stated, it being understood and agreed that not less than three (3) months prior to the (34) termination of said tontine period, said insured should notify this defendant, in writing, which of said benefits was selected,

and if no such notification should be received by this defendant, then the surplus should be applied to an annuity in one of the
37 forms stipulated in the "First Benefit" named therein. That in accordance with the terms of said policy, there became due, prior to the 18th day of June, 1909, from the defendant to defendant Gould, the sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars. That a copy of said policy is set forth in Exhibit "A," hereunto annexed, and said policy is hereby referred to and made a part hereof.

That this defendant is informed and believes, and upon such information and belief alleges, that on or about the 27th day of June, 1893, defendant Gould, being desirous of assigning said policy conditionally to his daughter, the plaintiff herein, provided he should die prior to the completion of the tontine period above mentioned, thereupon made, executed and delivered to this defendant the instrument, a copy whereof is set forth in paragraph 4 of the plaintiff's complaint herein. Upon the same ground this defendant alleges that said instrument was made on condition that if said defendant Gould should be alive at the time of the completion of the tontine period under the said policy, namely, on the 22d day of January, 1909, he would be entitled to the proceeds of the said policy, and it was made with no intention of making an absolute assignment of the said policy to the plaintiff herein, or to any other person; that neither said policy nor said assignment was ever delivered to the plaintiff, but said policy has always and up to the time of the payment of the proceeds thereof, as hereinafter set forth, remained in the possession of said defendant Gould, and said defend-
38 ant Gould paid all premiums on the said policy; and said assignment was delivered to this defendant in conformity with this defendant's (35) rules, and not otherwise. That prior to the date next hereinafter named, both plaintiff herein and defendant Gould made demand upon this defendant for said sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars, the proceeds of the said policy.

That on or about the 18th day of June, 1907, plaintiff herein, being indebted to Boggs & Buhl, Inc., a corporation organized and existing as such, for and on account of goods, wares and merchandise theretofore sold and delivered by said Boggs & Buhl, Inc., to plaintiff herein, said Boggs & Buhl, Inc., commenced an action in the Court of Common Pleas Number 4, in and for the County of Allegheny, State of Pennsylvania, said court being a court of record and having a seal, against the plaintiff herein, for the recovery from the plaintiff herein of the value of said goods, wares and merchandise; that thereafter, and on the 18th day of June, 1907, a subpœna duly issued out of and under the seal of said court, directed to the plaintiff herein, commanding and directing that she be and appear before the said court on the first Monday of July, 1907, to answer the said Boggs & Buhl, Inc.; that thereafter, and on the 24th day of June, 1907, said subpœna was duly served on the plaintiff herein, by handing a true and attested copy thereof to an adult member of said plaintiff's family at her dwelling-house; that thereafter, and

on the 8th day of July, 1907, judgment was duly given and
39 made in said action by said court in favor of said Boggs & Buhl, Inc., and against plaintiff herein for the sum of five hundred and thirty-seven and 76/100 (573.76) dollars, and on or about the 10th day of November, 1909, in said action, an execution attachment was issued out of and under the seal of said court, which said execution attachment was thereafter, and on or about the 11th day of November, 1909, duly served upon this defendant in said County of Allegheny, State of Pennsylvania, by handing a true and attested copy thereof to F. W. Hubbard, an agent of the defendant duly authorized to receive service thereof, and on the same day said (36) execution attachment was served upon the defendant Gould by handing a true and attested copy thereof to an adult member of his family at his dwelling-house.

That at all times herein mentioned, this defendant was doing, and authorized to do, a general life insurance business in the State of Pennsylvania, and in the County of Allegheny, said state.

That thereafter, it appearing that plaintiff herein and defendant Gould and others, made claim to the proceeds of said policy, this defendant, in said action of Boggs & Buhl, Inc., against plaintiff herein prayed for a rule upon said defendant Gould, plaintiff, and said Boggs & Buhl,Inc.,to show cause why they should not interplead together for the purpose of ascertaining to which of said last named persons the same sum of twenty-four hundred and seventy-nine and
70/100 (2479.70) dollars, the proceeds of said policy in the
40 hands of this defendant, belonged, and for leave to pay the said sum into the said court for the benefit of such person as should appear to be entitled thereto.

That thereafter, and on or about the 5th day of February, 1910, said rule was by said Court granted on plaintiff, defendant Gould and said Boggs & Buhl, Inc., to show cause why they should not interplead together for the purpose of ascertaining to which of said last named parties the money in the hands of this defendant belonged, and why this defendant should not be permitted to pay the same into the said Court for the benefit of such person as might appear to be entitled thereto; and said Court further ordered that service of the said rule be made upon plaintiff by serving her personally with a copy of the said petition of this defendant, and of the said order, or by sending to her a copy of each by mail; that thereafter, and on or about the 18th day of February, 1910, a copy of the said petition, together with a copy of the said order, was served on plaintiff by (37) personally delivering to, and leaving with, her a true and correct copy thereof. That thereafter, and on the third day of March, 1910, said rule to show cause was by the said Court made absolute. That thereafter, and prior to the date next hereinafter mentioned, said Boggs & Buhl, Inc., and defendant Gould filed their answers, respectively, to said rule.

That thereafter, and on or about the third day of May, 1910, the said Court ordered that a feigned issue be tried, which said feigned issue was as follows, to wit:

41 "Whether Joseph W. Gould made a valid gift of policy number 305,011, issued to him by the New York Life Insurance Company, to Effie J. Gould, now Effie J. Dunlevy."

That in March, 1910, the said Court, by its order duly given and made, ordered that plaintiff herein be plaintiff in the said feigned issue so framed, and that defendant Gould be defendant in the said feigned issue so framed.

That thereafter, and on or about the 19th day of March, 1910, by leave of the Court first had and obtained, this defendant paid into the said court said sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars.

That thereafter, and on or about the 19th day of September, 1910, a trial was had of the feigned issues so framed, wherein defendant therein, defendant Gould herein, had judgment against the plaintiff therein, plaintiff herein.

That thereafter, and on or about the first day of October, 1910, said sum of twenty-four hundred and seventy-nine and 70/100 (2479.70) dollars, less eight and 70/100 (8.70) dollars poundage, was, by order of the said Court, paid to defendant Gould.

All of the foregoing will more fully appear from a copy of the proceedings had and obtained in said action of Boggs & Buhl, Inc., versus Effie J. Dunlevy, reference to which is hereby (38) made, and which said copy is made a part hereof.

42 Wherefore, defendant New York Life Insurance Company prays to be hence dismissed with its costs herein.

PAGE, McCUTCHEN & KNIGHT,
PAGE, McCUTCHEN, KNIGHT & OLNEY,
Attorneys for Defendant New York Life Insurance Company. (39)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

F. E. Boland, being first duly sworn, says:

That he is an employee of the firm of Page, McCutchen, Knight & Olney, attorneys for New York Life Insurance Company, one of the defendants named in the foregoing answer, and as such employee has charge of the within entitled action and is familiar with the matters set forth in said answer. That the officers of said defendant are, and each of them is, without the City and County of San Francisco, and therefore affiant makes this verification on behalf of said defendant. That he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

F. E. BOLAND.

Subscribed and sworn to before me, this 7th day of December, A. D. 1911.

[SEAL.]

HENRY P. TRICOU,
Notary Public in and for the City and County of San Francisco, State of California. (40)

43 *Exhibit "A" [to Amended Answer—Transcript of Proceedings Had in Court of Common Pleas No. 4, County of Allegheny, Pa., in Boggs & Buhl vs. Dunlevy].*

Exemplification of Record.

COMMONWEALTH OF PENNSYLVANIA,
Allegheny County, sct:

Among the Records and Proceedings of the Court of Common Pleas No. Four in and for the County of Allegheny, and State of Pennsylvania, the following may be found as matter of File and of Record at No. 777, Third Term, 1907.

Appearance Docket Entry in Boggs & Buhl vs. Dunlevy.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

June 18, 1907.

Summons in Assumpsit to 1st Monday, July, 1907, afft. and Statement filed. Served June 24, 1907. July 8, 1907, judgment against deft. in default of appearance for five hundred thirty-seven and 76/100 dollars ($537.76).

No. 253—First Term, 1910.
Feigned Issue.
No. 2, Second Term, 1910. (41)

44 In the Court of Common Pleas No. 4 of Allegheny County, Pa.

No. 777, Third Term, 1907.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

To W. B. Kirker, Pro.:

Issue Summons in Assumpsit against the above-named defendant, returnable next return day, sec. reg.

WILLIS F. McCOOK,
Attorney for Plaintiff.

Statement and Claim [in Boggs & Buhl vs. Dunlevy].

Boggs & Buhl, a corporation, above named, claims of the defendant above named the sum of $497.14, with interest from Feb. 26, 1906. Between May 12, 1905, and April 26, 1906, the plaintiff sold and delivered to the defendant certain goods and merchandise as

set forth in the itemized statement of account hereto attached and made part of this statement; the prices charged for the respective goods on the respective dates are the reasonable and usual charges for the said goods and the prices agreed upon between the plaintiff and the defendant at the time of the said purchases.

At the time that each of the enumerated articles were sold, the defendant agreed specially to pay for the same and to charge her separate estate therefor. And the plaintiff avers that it was
45 upon this special arrangement and assurance of the defendant that the goods were sold and delivered.

Plaintiff further avers that the defendant is a married woman but that her husband at the time of the said sales was not financially responsible and is not now financially responsible. The itemized statement hereto attached is a true and correct copy (42) of the plaintiff's books of original entry. The full amount of the sales is $579.49 for which defendant is entitled to a credit for goods returned amounting to $212.35 and $50, cash payment, leaving a balance due of $497.14, for which this suit is brought.

BOGGS & BUHL,
Per W. C. GEORGE.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

W. C. George, being duly sworn, deposes and says that he has knowledge of the allegations contained in this statement of claim, having special charge of this account, and that he is the agent of the plaintiff company to make this affidavit, and that the allegations contained in the foregoing statement of claim are true and correct.

W. C. GEORGE.

Sworn to and subscribed before me this 18th day of June, 1907.
[SEAL.] J. C. SHERRIFF,
Notary Public.

My commission expires January 16th, 1909. (43)

46 Boggs & Buhl, Incorporated.

Dry Goods.

ALLEGHENY, PA., May 31, 1907.

Sold to Mrs. R. M. Dunlevy, 58 Sprague Ave., 231 Lehigh Ave., Pittsburgh, Pa., Bellevue, Pa.

All bills are net cash, due when rendered.

1905.				
May 12.	3 cd. Buttons	.08		.24
13.	1 pr. Booties			.65
16.	1 pr. Shoes		2.50	
	1 Pin		.75	
	4 pr. Hose	.25	1.00	4.25

	17.	1 Tie		.50	
		2 pr. Drawers for		1.00	
		14 yds. Swiss	.10	1.40	
		1 Belt		.25	3.15
	23.	1 Skirt		1.25	
		1 Skirt		1.00	
		1 Corset		2.00	
		1 Bustle		.50	4.75
	27.	2 Skirts	1.50	3.00	
		1 Suit		27.50	30.50
June	28.	6 Collars for		1.50	
		1 Hair Roll		.25	
		1 yd. Batiste		1.00	2.75
July	8.	4 pr. Hose for		2.00	
		6 pr. Hose "		2.00	(44)
47					
July	8.	3 pr. Hose for		2.00	6.00
July	10.	1 Skirt		1.00	
		1 pr. Suspenders		.25	1.25
	15.	1 pr. Oxfords		3.50	
		1 " "		4.00	
		2 Caps	.50	1.00	8.50
	19.	1 Skirt		1.50	
		1 Wash Suit		8.50	
		1 Comb		.25	10.75
		1 Comb		.50	
Aug.	7.	1 pr. Supporters		.25	
		1 Waist		.25	
		1 pr. Gloves		1.00	
		1 pr. Oxfords		2.00	3.50
	9.	2 Ties	.50	1.00	
		6 Collars for		.75	
		1 pr. Suspenders		.50	2.25
	10.	1 dz. Hdkfs		1.50	
		5 Hdkfs.	.03	.15	
		10 "	.15	1.50	
		6 Collars for		.75	
		2 L. Skirts	8.50	17.00	20.90
					99.44
	11.	3 Waists	.25	.75	
		1 Petticoat		2.00	
		2 pr. Drawers	.50	1.00	
		1 Belt		.50	4.25
	12.	1 Suit		2.50	
		1 Suit		1.00	
		1 Cap		.50	
		1 Bustle		.50	

(45)

48

		1 pr. Supporters		.50	
		2 W. Waists	1.50	3.00	8.00
Aug.	14.	1 Corset		2.50	2.50
Aug.	29.	1 Velocipede		3.00	3.00
Sept.	29.	1 Cap		.50	.50
Oct.	7.	2 pr. Shoes	4.00	8.00	
		1 " "		3.50	
		1 " "		2.50	14.00
Oct.	23.	1 Hat		8.00	
		1 Vest		.70	8.70
	25.	3 pr. Pants	.70	2.10	
		2 Vests	.70	1.40	
		1 Shirt		1.00	
		1 yd. Veiling		.50	
		1 yd. "		.85	
		2 Boys' Suits	7.50	15.00	20.85
	28.	1 pr. Gloves		1.00	
		3 " Drawers	.75	2.25	
		1 Gown		1.00	
		1 Gown		.75	
		3 Chemises		2.25	
		6 pr Soxs for		2.00	
		6 pr. Hose "		2.00	
		6 pr. Hose "		2.00	
		3 pr. Drawers	1.00	3.00	
		1 Shirt		1.00	17.25
Nov.	2.	4 pr. Swiss Curtains	.85	3.40	
		3 C. Vests	.50	1.50	4.90
	8.	1 Squirrel Collar		6.50	
		1 Corset		5.00	

49

	1 Corset		3.00	
	1 Coffee Pot		1.00	
	2 Spoons	.05	.10	15.60

(46)

Nov.	9.	1 Squirrel Scarf		8.50	8.50
	11.	¾ yds. Ribbon	1.00	.75	.75
	13.	1 Side Comb		.50	
		1 n. Comb		.50	
		1 Hair Rat		.25	
		2 pkgs. Hair Pins	.05	.10	1.35
Dec.	6.	1 Corset			1.00
	7.	1 Hdkf.			.50
					211.09
	13.	1 Scarf		.50	
		1 qr. Paper		.10	
		1 Cushion		.25	

		5 yds. Crash	.10	.50	
		5 W. Cloths	.05	.25	
		1 pr. Scissors		.25	
		1 Cuff Pins		.10	
		2 pr. Lacers	.05	.10	2.05
	14.	1 Bt. Trimming		.28	
		6 Str. Trimming	.05	.30	
		1 Bell		.05	
		2 Ducks	.05	.10	
		1 Stocking		.25	
		1 Moss		.05	
		1 Snow		.05	
		1 Tree Holder		.50	
		2 Toys	.25	.50	
50					
		1 Magic Lantern		.50	
		3 Ornaments	.10	.30	
		2 Ornaments	.05	.10	
		1 Ornament		.05	
		1 Horn		1.50	
		1 Drum		1.00	(47)
Dec.	14.	1 Board		.75	
		1 Ten Pins		.75	
		1 Head		.85	
		1 Tree		.50	8.38
	15.	1 Waist		3.00	
		1 pr. Gloves		1.00	
		1 Gold Belt		1.00	
		1 Scarf		.50	
		1 yd. Veiling		.35	5.85
	16.	1 Book		.35	
	16.	1 Book		.80	
		1 Book		1.00	
		1 dz. Tumblers		.75	
		1 Lamp Trimming		1.00	
		1 Brass Ring		.25	
		1 Book		.85	4.70
	19.	1 Watch Fob		2.25	
		1 Kettle		1.00	
		2 Kettles	.60	1.20	
		1 pr. Gloves		1.00	
		2 Ties	.50–.25	.75	6.20
	20.	1 Buffer		2.25	
		1 Shoe Hook		1.00	
		1 C. Knife		1.00	
51					
		1 File		1.00	
		1 Shoe Horn		1.25	6.50
	21.	1 Bolt Ribbon			.60
	27.	1 Waist			5.00
		1 pkg. Needles		.05	

30.	1 Waist		4.00	
	1 pr. Shoes		2.00	
	1 Hose Supporter		.75	
	1 pr. Hair Pins		.05	
	1 yd. Elastic		.04	6.89
				257.26

(48)

1906.

Jan. 4.	1 Waist		3.50	
	1 Clock		1.35	
	2 pr. Shoes	4.00	8.00	12.85
10.	1 pr. Gloves		.25	
	1 pr. Gloves		.50	
	1 pr. Gloves		.75	1.50
13.	2 pr. Gloves	.50	1.00	
	1 Skirt Supporter		.25	
	1 pkg. Hair Pins		.05	1.30
16.	1 pr. Pants			1.00
18.	6 Collars for		.75	
	1 Waist		4.50	
	1 Lace Collar		1.25	6.50
24.	4 pr. Hose for		1.00	
	1 Satchel		11.50	12.50
30.	1 Veil			.50

52

Feb. 7.	1 pr. Shoes		3.50	
	1 Waist		8.50	12.00
21.	1 Waist			5.00
March 5.	1 pr. Boy's Shoes			2.50
13.	1 pr. Boots			2.50
16.	1 pr. Drawers		.50	
	1 pr. Drawers		.25	
	1 pr. Drawers		.75	
	2 pr. Hose	.25	.50	
	1 pr. Hose		.35	
	2 Aprons	.35	.70	
	2 Aprons	.25	.50	
	1 Apron		.75	4.30

(49)

March 20.	¾ yds. Felt	1.25	.94	
	1 pr. Gloves		.50	1.44
24.	1 pr. Gloves		1.25	
	1 pr. Gloves		.50	1.75
27.	1 Umbrella			2.00
29.	1 yd. Veiling			.50

April	4.	Alteration on suit		2.00	
		2 Boys' Suits	8.50	17.00	
		1 Boy's Suit		7.50	
		1 Boy's Suit		5.00	31.50
	5.	1 Blue Suit		22.50	
		1 Suit		22.50	45.00
					401.90
	7.	1 Suit		3.50	
		1 Suit		8.50	
		1 Suit		5.00	
		2 Caps	.75	1.50	18.50
53					
	11.	2 Waists	4.50	9.00	
		1 Waist		5.00	14.00
	12.	8 pr. hose	.25		2.00
	14.	1 pr. Shoes		4.00	
		1 pr. Shoes		2.50	
		1 Fancy Vest		5.00	
		1 Hat		10.00	
		1 Hat		8.00	
		1 Hat		7.50	
		1 Suit		2.75	
		1 Suit		22.00	
		3 C. Waist	.25	.75	
		1 Waist		4.50	
		1 Set Pins		1.00	
		1 Set Studs		.35	
(50)					
April	14.	1 Shirt		2.00	
		1 Collar		.15	
		1 Tie		.35	
		1 Bronz- Bust		11.00	
		1 pr. Gloves		1.00	
		1 Hair Curlers		.10	
		1 Hair Curler		.25	
		1 pr. Supporters		.25	
		2 Cube Pins		.20	
		1 dz. Hdkfs		2.85	
		1 dz. "		1.50	
		1 Wagon		1.25	89.25
	17.	2 pr. Cuffs	.25	.50	
		2 Linen Collars	.12½	.25	
		1 Hat		9.00	9.75
	19.	1 Hand Bag			1.25
54					
	27.	1 dz. Towels		3.00	
		3 pr. Hose		1.00	
		3 pr. Curtains	3.00	9.00	
		3 pr. Curtains for		13.50	
		2 Cloths	2.50	5.00	31.50

May	4.	1 dz. Cups and Saucers			3.25
	11.	1 Hair Roll		1.50	
		1 pkg. H. Pins		.05	
		1 cs. S. Pins		.07	
		1 cs. S. Pins		.08	
		1 Sp. Cotton		.05	
		1 pkg. Needles		.05	
		1 pr. Scissors		.50	
		1 pr. Supporters		.25	2.55
					573.95
(51)					
May	16.	1 Waist		1.50	
		1 Waist		1.75	
		1 Corset		2.00	
		1 Corset		2.50	
		1 Lacer		.10	
		2 Gowns	1.00	2.00	9.85
	25.	3 Awnings for			26.00
June	2.	1 dz. Hdkfs			1.50
	11.	1½ Sk. Yarn		.27	
		1 Book		.35	
		1 C. Set		.50	
		1 B. Box		1.00	
		1 pr. Oxfords		4.00	
		1 pr. Oxfords		3.50	9.62
55					
	20.	1 White Belt		.50	
		3 pr. Hose for		1.00	
		3 " " "		1.00	
		1 Wht. Skirt		4.50	
		1 Wht. Skirt		3.75	
		1 Tan Skirt		4.50	
		2 Skirts	1.50	3.00	
		2 Shirts for		2.00	
		3 pr. Drawers	.50	1.50	
		1 Petticoat		2.00	
		2 C. Covers	.25	.50	
		2 pr. Drawers	.75	1.50	25.75
	22.	1 Ironing Board			1.25
July	20.	1 yd. Veiling			.50
	31.	1 Corset		4.00	
		1 pr. Boy's Shoes		2.25	
		3 Chamois 10/10/20		.40	
		1 Bottle Perfume		.60	
		2 Belts 10/25		.35	
(52)					
July	31.	1 Skirt Supporter		.25	
		1 Cube Pins		.10	7.95

Aug.	1.	1 Corset		5.00	
		1 Supporter		.50	
		1 pr. Supporters		.25	
		1 Crimper		.15	5.90
	7.	1 Corset		1.50	
		1 Umbrella		2.00	3.50
	10.	1 pr. S. Gloves			2.00
	15.	12 yds. Mull	.15	1.80	
		4 sp. Silk	.10	.40	
56					
		1 sp. Cotton		.05	
		1 pkg. Needles		.05	
		10 yds. Poplin	.15	1.50	
		10 yds. Poplin for		1.43	5.23
					673.00
	16.	2 yds. Insertion	.10	.20	
		1½ yds. Lace for		.16	
		½ yd. Medallions		.55	
		2 Patterns	.15	.30	
		1 Delineator Sub		1.00	2.21
	17.	2 bt. Insertion	1.20		2.40
	22.	1 Suit		2.75	
		1 Suit		2.00	4.75
	31.	1 Chemise		.75	.75
Sept.	15.	1 Cap		.75	
		1 Coat		3.50	4.25
Oct.	15.	3 pr. Hose for		1.00	
		1 Waist		3.50	4.50
	24.	1 Waist			3.50
Nov.	1.	1 Waist			8.50
Dec.	12.	⅞ yd. Belting	1.00	.88	
		3 Gowns	2.00	6.00	
(53)					
		1 Hand Bag		3.50	
		1 pr. 1. Shoes		4.00	
		1 pr. Boy's Shoes		2.25	
		3 Shirts	1.00	3.00	19.63
	14.	1 Satchel			11.00
	15.	1 White Waist		8.50	
		1 White Waist		5.00	
57					
		1 White Waist		5.00	
		1 White Waist		3.50	22.00
April	26.	3 Sheets	.50	1.50	
		3 N. Shirts	.50	1.50	3.00
					759.49

Less Merchandise Returned.

Aug.	8.	1 pr. Oxfords		3.50
	11.	1 Skirt		8.50
Nov.	7.	2 Boys' Suits	7.50	15.00
	9.	1 Squirrel Collar		6.50
Dec.	16.	1 Corset		5.00
	30.	1 Waist		5.00
Jan.	20.	1 pr. Shoes		4.00
Feb.	21.	1 Waist		3.50
April	4.	1 Suit		22.00
	6.	2 B. Suits	8.50	17.00
	6.	1 Boy's Suit		7.50
	6.	1 Boy's Suit		5.00
	13.	1 Apron		.75
	13.	1 Cap		.75
	13.	1 Suit	8.50 & 5.00	13.50
	19.	2 Waists	4.50	9.00
	20.	1 Hat	10.00/8.00	18.00
		1 Hat		7.50
(54)				
May	4.	2 Pattern Cloths	2.50	5.00
	16.	1 dz. Hdkfs		2.85
	16.	1 dz. "		1.50
				160.85
58				
	16.	1 Suit		22.00
		1 Fancy Vest		5.00
June	2.	3 pr. Curtains	3.00	9.00
		1 Corset		2.50
July	31.	1 pr. Oxfords		4.00
August	1.	1 Corset		4.00
		1 pr. Supporters		.50
Nov.	17.	1 Waist		3.50
				212.35
				212.35
				547.14
1906.				
Feb.	26.	By cash		50.00
				497.14

Issued June 18, 1907. (55)

Summons in Boggs & Buhl vs. Dunlevy.

THE COMMONWEALTH OF PENNSYLVANIA,
Allegheny County, ss:

[SEAL.]

To the Sheriff of said County, Greeting:

We command you that you summon Effie J. Dunlevy so that she be and appear before our Court of Common Pleas No. 4 to be holden at the City of Pittsburgh, in and for said County, on the first Monday of July next, there to answer Boggs & Buhl of a Plea of Assumpsit.

And have you then and there this Writ.

Witness the Hon. Jos. M. Swearingen, President, Judge
59 of our said Court, the 18th day of June, A. D. one thousand nine hundred and seven.

WM. B. KIRKER,
Prothonotary.

[Endorsed:] No. 777, Third Term, 1907. Boggs & Buhl vs. Effie J. Dunlevy. Summons in Assumpsit to first Monday of July, 1907. Willis F. McCook, Attorney for Plaintiff.

Shff. G.	2.00
M.	1.00

Served the within writ June 24th, 1907, on Effie J. Dunlevy, defendant, by handing a true and attested copy thereof to an adult member of her family at her dwelling-house.

So Ans.

ADDISON C. GUMBERT,
Sheriff. (56)

No. 777, Third Term, 1907.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Præcipe for Judgment [in Boggs & Buhl v. Dunlevy].

To William B. Kirker, Prothonotary:

Enter judgment in the above-entitled case in favor of the plaintiff and against defendant in the sum of $537.76 for want of
60 an appearance and affidavit of Defense, sec. leg. et sec. reg., and liquidate as follows:

Real debt	$497.14
Interest from Feb. 26, 1906, to July 8th, 1907	40.62
	$537.76

WILLIS F. McCOOK,
Attorney for Plaintiff.

Filed July 8th, 1907. (57)

Court of Common Pleas No. Four of Allegheny County, Pa.

No. 777, 3d Term, 1907.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Præcipe for Appearance [*in Boggs & Buhl vs. Dunlevy*].

To W. B. Kirker, Esq., Prothonotary:
Enter my appearance for Boggs & Buhl, Plaintiff, sec. reg.
S. H. HUSELTON,
Attorney for Plaintiff.

Nov. 10, 1909. (58)

In the Court of Common Pleas No. Four of Allegheny County, Penna.

No. 253, First Term, 1910.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

61 *Appearance Docket Entries* [*in Boggs & Buhl vs. Dunlevy*].

Nov. 10, 1909.

Ex. Att. Sur. Judgment No. 777 Third Term, 1907, to 1st Monday, December, 1909, and summon New York Life Insurance Company and Joseph W. Gould as Garnishees. And now, Nov. 20, 1909, Rule granted on Plff. to show cause why rule requiring garnishee to answer should not be set aside, proceedings stayed "Writ executed Nov. 11, 1909, on F. W. Hubbard, Cashier New York Life Insurance Company and Joseph W. Gould, and Nihil Habet as to Deft." Dec. 27, 1909, on argument list and rule discharged and Garnishees allowed until Jan. 1, 1910, to answer. Dec. 28, 1909, Answer of Joseph W. Gould filed. Jan. 3, 1910, Answer of New York Life Insurance filed. Jan. 17, 1910, Rule ex parte Plff. for judgment on Garnishee. Answers reasons filed.

And now, Feb. 5, 1910, Rule granted on Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, to show cause why this should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs and why said Company should not be permitted when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand four hundred seventy-nine and 70/100 ($2479.70) Dollars into court for the benefit of such person as shall appear to be entitled thereto. And it appearing that Effie J. Dunlevy is a resident of the State of California, it is hereby
62 ordered and decreed that service of said rule, be by serving her personally with a copy of this petition and order, or by

sending a copy of (59) same by mail or registered mail to her at her last known address. Returnable, Feb. 26, 1910. Feby. 19, 1910. Answer of Joseph W. Gould to rule filed. Feb. 26, 1910, Answer of Boggs & Buhl to rule filed, Mar. 1, 1910, Proof of service filed showing notice of rule to Interplead served on Plffs. Atty. Eo Die Afft. of service upon Effie J. Dunlevy of Notice, Petition and Order of Court filed, Mar. 3, 1910, on Argument List and Rule to interplead made absolute. Mar. 4, 1910, Rule for Judgment discharged. And now, Mar. 19, 1910, it is ordered, adjudged and decreed that the New York Life Insurance Co. be given leave to pay the sum of $2479.70 into this court to abide the result of the issue to be framed by the Court. Eo Die leave is granted to the Lincoln National Bank to intervene and be made a party to the issue to be framed between the parties lawfully claiming the $2479.70 heretofore paid into court by the New York Life Insurance Co., garnishee, atty. for Plff. being present and not objecting. Eo Die it is ordered that a Feigned Issue Eo Die Opinion filed. Mch. 21, 1910, Received of Gordon & Smith, attys. for New York Life Insurance Co. the sum of Twenty-Four Hundred Seventy-nine and 70/100 ($2479.70) Dollars, less poundage on same, leaving the sum of Twenty-four Hundred Seventy One and no/100 ($2471.00) Dollars, which sum I have deposited subject to the further order of Court.

WM. B. KIRKER, *Pro.*

63 F. I. No. 2, Second Term, 1910.

And now, May 3, 1910, it is ordered that the issue to be tried in this case shall be as follows, to wit, whether Joseph W. Gould made a valid gift of policy No. 305,011 issued to him by the New York Life Insurance Co. to Effie J. Gould, now Effie J. Dunlevy, All attaching creditors of said Effie J. Dunlevy, who desire to intervene in this proceeding are required to do so as plaintiffs herein on fifteen (15) days' notice to the attys. of record, and to file their statements of claim or demand within said period of (60) fifteen (15) days. And now, Oct. 1, 1910, it is ordered, adjudged, and decreed that Wm. B. Kirker, Pro., pay to Joseph W. Gould, or to his attorney, L. B. D. Reese, forthwith, the sum of $2,471, that being the amount received by said Prothonotary from the New York Life Insurance Company Mar. 21, 1910, less his poundage, viz., $8.70, by virtue of an order of this Court, date March 19, 1910 said money having been paid to said prothonotary by said Insurance Company and received by him in proceedings at No. 253 First Term, 1910, of this court. Oct. 3, 1910, Received of Wm. B. Kirker, Pro., the sum of Twenty-four Hundred Seventy-one and no/100 ($2471.00) Dollars as per above order of Court.

L. B. D. REESE,
Att'y for Joseph W. Gould.

Attest:
JOHN VOGT.

Feigned Issue No. 2 Second Term, 1910. (61)

64 C. P. No. 4, Alleg. Co., Pa., 3d Term, 1907.

No. 777.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Præ. for Ex. Attachment [*in Boggs & Buhl v. Dunlevy*].

To W. B. Kirker, Esq., Pro.:

Issue execution attachment against defendant in above-stated case and summon the New York Life Insurance Co. and Joseph W. Gould as Garnishees, sec. reg.

S. H. HUSELTON,
Att'y for Pl'ff.

Nov. 10th, 1909. (62)

Execution Attachment Sur. Judgment [*in Boggs & Buhl vs. Dunlevy*].

ALLEGHENY COUNTY, *ss:*

The Commonwealth of Pennsylvania to the Sheriff of Allegheny County, Greeting:

[SEAL.]

Whereas, Boggs & Buhl, lately before our Judges of our Court of Common Pleas No. —, at Pittsburgh, to wit, on the 8th day of July, A. D. 1907, by the Judgment of said Court recovered against Effie J. Dunlevy ($537.76), a Judgment for the sum of Five Hundred Thirty-seven and 76/100 Dollars, lawful money of the United States, for debt, as also the sum of Fifty Dollars, costs and
65 charges, by it about its suit in that behalf expended, whereof the said defendant duly convict, as appears to us of record.

And

Whereas, it is alleged that the same judgment still remains due and unpaid to the said plaintiff, and that certain goods, chattels, moneys, and effects of the said defendant are in the hands or possession of New York Life Insurance Co. and Joseph W. Gould and liable to be Attached and Levied in satisfaction of the Judgment aforesaid. Now we command you, That you attach all and singular the debts due to said defendant, and deposits of money made by him and goods or chattels, pawned, pledged or demised by him in whose hands or possession soever the same may be found; and that you make known to the said New York Life Insurance Co. and Joseph W. Gould, as Garnishees and all other persons from whom such debts may be due, or in whose hands or possession such moneys, goods, or chattels, etc., may be found, that they may be and appear before our said Court, to be holden at Pittsburgh in and for said County, on the first Monday of December next, there

to show cause why the Judgment aforesaid (63) should not be levied of the effects of said defendant in their hands agreeably to the Thirty-fifth Section of the Act of Assembly, passed the 16th day of June, 1836, relative to executions; and have you then and there this Writ.

Witness, the Hon. Jos. M. Swearingen, President of our said court, at Pittsburgh, the 10th day of Nov. A. D. one thousand nine hundred and nine.

WM. B. KIRKER,
Prothonotary.

66 [Endorsed:] No. 253 First Term. 1910. Boggs & Buhl vs. Effie J. Dunlevy. Execution Attachment Sur Judgment. No. 777—3d Term, 1907, to first Monday, December, 1909. S. H. Huselton, Plaintiff's Attorney.

Shff. G., 3.80.
M., .50.

Executed the within writ November 11th, 1909, by handing a true and attested copy thereof to F. W. Hubbard, Cashier, New York Life Insurance Company, making known to him the contents thereof; and on same date served Joseph W. Gould, by handing a like true and attested copy of the within writ to an adult member of his family at his dwelling-house; and at the same time summoning New York Life Insurance Company and Joseph W. Gould, as Garnishees, and after diligent search and inquiry and being unable to fine Effie J. Dunlevy, defendant, named herein within my Bailiwick, do return Nihil Habet as to her.

So Ans.

ADDISON C. GUMBERT, *Sheriff.* (64)

In the Court of Common Pleas No. Four of Allegheny County, First Term, A. D. 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Execution Attachment.

67 And now, to wit, Nov. 11th, 1909, Rule on the Garnishee Joseph W. Gould and New York Life Insurance Company to make full, true and direct answers, in writing, under oath or affirmation, to the interrogatories annexed hereto, on ten days' notice, or judgment, sec. reg.

S. H. HUSELTON,
Attorney for Plaintiff.

Interrogatories to Garnishees [in Boggs & Buhl vs. Dunlevy].

First Interrogatory. Do you know the defendant?

Second Interrogatory. State whether you have any Life Policy in which defendant is beneficiary or assignee or moneys, goods, bonds, notes or other evidence of indebtedness in your hands belonging to the said defendant. If any, state the kind and amount of said indebtedness

Third Interrogatory. State whether or not, at the time of the service of the writ in this case on you there was any money in your hands due the said defendant, and how much? Also, state whether any money has since that, come into your hands, or has accrued to the said defendant?

Fourth Interrogatory. State whether or not, you owed the defendant any money, and if yea, the amount of the same, and when due, on policy of insurance of Joseph W. Gould in which defendant is beneficiary or assignee? (65)

[Endorsed:] Copy. No. 253—First Term, 1910. Boggs & Buhl, versus Effie J. Dunlevy. Interrogatories to New York Life Insurance Co., Joseph W. Gould, Garnishee. S. H. Huselton, Attorney for Plaintiff. (66)

68 In the Court of Common Pleas No. Four of Allegheny County, First Term, 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Execution Attachment.

Rule to Show Cause and Affidavit [in Boggs & Buhl vs. Dunlevy].

To the Honorable the Judges of said Court:

The petition of Joseph W. Gould, one of the Garnishees in the above-stated execution attachment, on behalf of himself and the New York Life Insurance Company, the other Garnishee named in said writ, respectfully represents:

That said writ was issued by the Prothonotary on the 10th day of November, 1909, and no return of said writ has yet been made by the Sheriff of said County.

That notwithstanding that no return has been made to said writ, the plaintiff, on November 11th, 1909, ruled the Garnishees to answer Interrogatories in said execution attachment before the return of the writ of scire facias therein by the Sheriff.

Wherefore, petitioner prays your Honorable Court for a rule to show cause why the rule requiring the Garnishees to answer here-

69 tofore taken and served by the plaintiffs, should not be set aside; all proceedings on said execution attachment to be stayed in the meantime.

And he will ever pray, etc.

JOSEPH W. GOULD. (67)

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Joseph W. Gould, petitioner above named, being duly sworn according to law, deposes and says that the facts stated in the foregoing petition are true.

JOSEPH W. GOULD.

Sworn to and subscribed before me this 20 day of November, A. D. 1909.

WM. B. KIRKER, *Pro.*

Order [*Granting Rule to Show Cause in Boggs & Buhl vs. Dunlevy*].

And now, to wit, November 20, 1909, the within petition presented in open court, and rule is granted as prayed for. Returnable sec. reg.

BY THE COURT.

Filed Nov. 20, 1909. (68)

[*Appearance for Garnishees in Boggs & Buhl vs. Dunlevy.*]

In the Court of Common Pleas No. Four of Allegheny County, First Term, 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

70 Wm. B. Kirker, Esq., Pro.:

Enter my appearance D. B. E. for Garnishees in above stated case.

L. B. D. REESE.

Pittsburgh, November 20th, 1909.

Filed Nov. 20, 1909. (69)

In the Court of Common Pleas No. Four of Allegheny County, Pa., First Term, 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Præcipe for Appearance for N. Y. Life Ins. Co. [*in Boggs & Buhl vs. Dunlevy*].

Wm. B. Kirker, Esq., Prothonotary:

Enter our appearance in the above-entitled case for New York Life Insurance Company, Garnishee.

GORDON & SMITH,
Attorneys for New York Life Insurance Company, Garnishee.

Filed Dec. 6, 1909. (70)

In the Court of Common Pleas No. Four of Allegheny County, Penna., First Term, 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY, Def't; JOSEPH W. GOULD et al., Garnishees.

71 *Præcipe for Appearance for Joseph W. Gould* [*in Boggs & Buhl vs. Dunlevy.*]

Wm. B. Kirker, Esq., Pro.:

Enter my appearance for Joseph W. Gould, one of the Garnishees in above-stated case.

L. B. D. REESE.

Filed Dec. 28, 1909. (71)

[*Answer of Joseph W. Gould to Interrogatories in Boggs & Buhl vs. Dunlevy.*]

In the Court of Common Pleas No. Four of Allegheny County, First Term, 1910.

No. 253.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY, Defendant; JOSEPH W. GOULD and NEW YORK LIFE INSURANCE CO., Garnishees.

Execution Attachment.

Answer of Joseph W. Gould, One of the Garnishees in Above-Stated Case, to Interrogatories Served on Him.

Answer to First Interrogatory. I know the defendant.

Answer to Second Interrogatory. I have no life insurance policy in which defendant is beneficiary or assignee, or moneys, goods, bonds, notes or other evidence of indebtedness in my hands
72 belonging to the said defendant, except that the said defendant now occupies the relation or position of assignee in a life insurance policy on my life under the following circumstances: On the 24th day of January, 1889, the New York Life Insurance Company issued on my life their policy No. 305,011 in the sum of $5,000, wherein said company agreed to pay to my executors, administrators or assigns the sum of $5,000 upon receipt and approval at said office of proofs of my death during the continuance of said policy, after deducting therefrom all indebtedness to said company together with any balance of premiums remaining unpaid, and with the surrender of said policy. On or about June 27th, 1893, being desirous of assigning said policy conditionally to my daughter Effie J. Gould, now intermarried with R. M. Dunlevy, I called at the office of the New York Life Insurance Company and requested R. H. McCreary, the agent in charge of said office, to have said policy assigned to my daughter the said Effie J. Gould, on condition that I should die before said policy was paid up in full, desiring to reserve to myself the right to collect any money to be paid on said policy at the maturity thereof if I should (72) so long live. The agent of said company had said assignment prepared and I signed the same on his assertions that it was an assignment to my said daughter of the said policy only on the condition that I should die before the maturity of said policy or before all the premiums were paid thereon. I did not read the assignment before executing the same relying on the statement of the said McCreary, the agent of said company, that I was assign-
73 ing it conditionally in the manner hereinbefore stated.

I had no intention of making an absolute assignment of said policy, such as now appears to have been made, to my daughter Effie J. Dunlevy, or to any other person.

The said policy was never delivered to the said Effie J. Gould (now Dunlevy), to whom it was assigned, but has always been and is now in my possession and I have paid all premiums maturing on said policy since said assignment, and at maturity, supposed I would have no difficulty in collecting the amount of the surrender value of said policy but was met with said assignment.

On August 20th, 1909, through my attorney, L. B. D. Reese, I notified the said New York Life Insurance Company not to pay any moneys due thereon unto the said Effie J. Gould or to any person representing her; and soon thereafter I notified said company by letter to pay no moneys due or to become due on said policy to the said Effie J. Gould or to any person representing her, and I deny that the said Effie J. Gould has any interest in said policy, and aver that whatever there is due thereon belongs to me and not to the said Effie J. Gould.

I would not have executed said assignment had I not been informed by McCreary, the agent of said company, that I was making a conditional assignment of said policy, that the same was to be effective in case of my death before the maturity thereof, and to be void in case I should be living at the time said policy should (73) be paid up.

Answer to Third Interrogatory. At the time of the service
74 of the above writ on me, I had no money in my hands due the said defendant and no money has since that time come into my hands or accrued to the said defendant.

Answer to Fourth Interrogatory. I have never owed the defendant any money on a policy of insurance on my life in which the defendant occupies the relation of assignee, except as stated in my answer to the second interrogatory.

J. W. GOULD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Joseph W. Gould, being duly sworn according to law, deposes and says that the facts stated in the foregoing answers are true.

J. W. GOULD.

Sworn to and subscribed before me this 27th day of December, 1909.

[SEAL.] ALICE E. DUFF,
Notary Public.

My commission expires Jan. 21, 1911.

Filed Dec. 28, 1909. (74)

75 [*Answer of N. Y. Life Ins. Co. to Interrogatories in Boggs & Buhl & Dunlevy.*]

In the Court of Common Pleas Number Four of Allegheny County, 1st Term, A. D. 1910.

No. 253.

BOGGS & BUHL, Plaintiffs,
against
EFFIE J. DUNLEVY, Defendant.

Answer of Garnishee.

New York Life Insurance Company, as garnishee herein, answers the interrogatories filed by plaintiffs as follows:

To the first interrogatory said garnishee answers that it does not know defendant except through correspondence had with her in connection with policy No. 305,011 written by said garnishee on the life of one Joseph W. Gould.

To the second interrogatory said garnishee answers that said defendant claims an interest in said policy No. 305,011 as assignee but that said garnishee is uncertain as to what are the rights of said defendant in said policy by reason of the following facts, to wit: That on or about the 24th day of January, 1889, said garnishee duly entered into a contract with said Joseph W. Gould of Pittsburgh, Pennsylvania, as evidenced by its policy No. 305,011 there and then duly made and delivered to said Joseph W. Gould by the terms of which said garnishee undertook to and did insure the life of
76 said Joseph W. Gould for the sum of Five Thousand Dollars ($5,000.00) payable at the Home Office of said garnishee in the City of New York to said insured's executors, administrators or assigns, upon receipt and approval at said Home Office, of proofs as thereinafter required of the death, during the continuance of said policy, of said insured. That said policy was written on the ordinary life non-forfeiting limited tontine plan and further (75) provided that if said insured should be living at the completion of the tontine period thereunder, namely, on the 22d day of January, 1909, and said policy should then be in force, said insured would be entitled to a choice of certain benefits therein stated, it being understood and agreed that not less than three months prior to the termination of said tontine period said insured should notify said garnishee in writing which benefit was selected and if no such notification should be received then the accumulated surplus should be applied to the purchase of an annuity in one of the forms stipulated in the "First Benefit" named therein. A full, true and correct copy of said policy is hereto annexed marked Exhibit "A" and made a part hereof as though here set forth at length.

On or about the 30th day of June, 1893, said garnishee received at its Home Office a written instrument purporting to be signed by

said insured and dated and acknowledged the 27th day of June, 1893, a full, true and correct copy of which is hereto annexed marked Exhibit "B" and made a part hereof as though here
77 set forth at length. Said garnishee is informed and believes that the Effie J. Gould named in said instrument is one and the same person as said defendant Effie J. Dunlevy. Said policy provided that under no circumstances would said garnishee assume any responsibility for the validity of any assignment thereof, and said garnishee insists upon adhering to said provisions of said policy.

On or about the 10th day of December, 1908, said garnishee mailed to said insured and to said defendant a statement of the settlements from which selection of option was to be made in accordance with the provisions of said policy if it should be in force at the end of said tontine period and said insured should then be living, a full, true and correct copy of which statement is hereto annexed marked Exhibit "C," and made a part hereof as though here set forth at length. Said tontine period under said policy was (76) completed on said 22d day of January, 1909, said policy being then in force and said insured being then alive, as said plaintiff is informed and believes, but no selection of any of the settlements set forth in said statement was received by said garnishee prior thereto.

On or about the 16th day of February, 1909, said garnishee received a letter purporting to be signed by said insured and bearing date the 12th day of February, 1909, a full, true and correct copy of which is hereto annexed marked Exhibit "D," and made a part hereof as though here set forth at length. Thereafter and on the 3d day of March, 1909, said garnishee sent to its Pittsburgh
78 Branch Office a check for the cash surrender value of said policy No. 305,011, amounting to Twenty-four Hundred and Seventy-nine Dollars and Seventy Cents ($2,479.70) to the order of said Effie J. Gould as assignee, with instructions to deliver the same upon the signing by said Effie J. Gould, assignee of said garnishee's regular termination receipt and the delivery by her of the original of said policy and duplicate of said written instrument above referred to, marked Exhibit "B," and the signing by her of a selection of option to withdraw said cash surrender value of said policy.

On or about the first day of June, 1909, said garnishee received a letter purporting to be signed by said Effie J. Gould Dunlevy and dated the 27th day of May, 1909, a full, true and correct copy of which letter is hereto annexed marked Exhibit "B," and made a part hereof as though here set forth at length. A full, true and correct copy of the enclosure referred to in said letter is hereto annexed marked Exhibit "F" and made a part hereof as though here set forth at length. Thereafter and on, to wit, the 10th day of June, 1909, said garnishee recalled said check from its Pittsburgh Branch Office to be held by said garnishee at its Home Office until the title to said policy should be cleared up and on the same date said garnishee wrote a letter to said Effie J. Gould (77) Dunlevy, a full, true and correct copy of which letter is hereto annexed marked Exhibit "G" and made a part hereto as though here set forth at length. There-

after and on or about the 29th day of June 1909, said gar-
79 nishee received a letter purporting to be signed by said Effie J. Gould Dunlevy and dated the 23d day of June, 1909, a full, true and correct copy of which letter is hereto annexed marked Exhibit "H" and made a part hereof as though here set forth at length. Said garnishee replied to said letter on the 22d day of July, 1909, and a full, true and correct copy of said reply is hereto annexed marked Exhibit "I" and made a part hereof as though here set forth at length.

Thereafter and on or about the 21st day of August, 1909, said garnishee received a letter dated the 20th day of August, 1909, and signed by one L. B. D. Reese, as attorney for said Joseph Gould, a full, true and correct copy of which letter is hereto annexed marked Exhibit "J" and made a part hereof as though here set forth at length. Said garnishee replied to said letter under date of August 30th, 1909, and a full, true and correct copy of said reply is hereto annexed marked Exhibit "K" and made a part hereof as though here set forth at length.

On or about the 28th day of August, 1909, said garnishee received a letter purporting to be signed by said Effie J. Gould Dunlevy and dated the 23d day of August, 1909, a full, true and correct copy of which letter is hereto annexed marked Exhibit "L" and made a part hereof as though here set forth at length. On or about the 30th day of August, 1909, said garnishee replied to said letter and a full,
true and correct copy of said reply is hereto annexed marked
80 Exhibit "M" and made a part hereof as though here set forth at length. Thereafter and on or about the 9th day of September, 1909, said garnishee received a letter from said L. B. D. Reese, as attorney for said insured, dated the 3d day of September, 1909, a full, true and correct copy of which is hereto annexed (78) marked Exhibit "N," and made a part hereof as though here set forth at length. Thereafter and on or about the 11th day of September, 1909, said garnishee received a letter purporting to be signed by said insured dated the 8th day of September, 1909, a full, true and correct copy of which letter is hereto annexed marked Exhibit "O," and made a part hereof as though here set forth at length. Thereafter and on or about the 13th day of October, 1909, said garnishee received a letter from one Lee D. Windrem, as attorney for said Effie J. Gould Dunlevy and dated the 6th day of October, 1909, a full, true and correct copy of which letter is hereto annexed marked Exhibit "P" and made a part hereof as though here set forth at length. Thereafter and on or about the 25th day of October, 1909, said garnishee replied to said letter, a full, true and correct copy of which reply is hereto attached marked Exhibit "Q," and made a part hereof as though here set forth at length.

Said garnishee says that by reason of the facts above set forth it cannot without hazard to itself determine as to what are the respective rights of said defendant and said insured in and to said policy of insurance.

To the third interrogatory said garnishee answers that it
81 refers to its answer to the second interrogatory herein and makes the same a part hereof.

To the fourth interrogatory said garnishee answers that it refers to its answer to the second interrogatory herein and makes the same a part hereof.

Wherefore, said garnishee having fully answered prays that it may be duly advised as to its rights and duties in the premises and that upon its discharge it may be allowed a reasonable sum for its costs and disbursements.

NEW YORK LIFE INSURANCE COMPANY,
By SEYMOUR M. BALLARD,
Secretary. (79)

STATE OF NEW YORK,
County of New York, ss:

Seymour M. Ballard, being duly sworn, deposes and says that he is Secretary of the New York Life Insurance Company, the garnishee herein; that said corporation is duly organized and existing under and by virtue of the laws of the State of New York; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

SEYMOUR M. BALLARD.

Subscribed in my presence and sworn to before me this 23 day of November, 1909.

[SEAL.] LOUIS H. COOKE,
Notary Public No. 197, New York Co., N. Y.

My Commission expires March 30th, 1910. (80)

82 [*Exhibits "A"–"Q" to Answer of N. Y. Life Ins. Co. to Interrogatories in Boggs & Buhl vs. Dunlevy.*]

No. 305,011.

New York Life Insurance Company.

Assurance on the Life of J. W. Gould.

Amount, $5,000.

For the information of the assured, and in order that any unintentional errors or omissions which hereafter may be found to exist may be corrected, an abstract of the application upon which this Policy is based may be found on third page within.

If corrections are desired, when satisfactory to the Company, a Certificate to that effect will be issued over the signature of the President or Actuary.

L. C. V. & CO., *Agent.*

The De Vinne Press. (81)

83 Single Premiums, to Secure $1,000.

Payable at Death.

Age.		Age.	
25	$356.46	50	$645.05
26	363.34	51	662.54
27	370.50	52	680.43
28	377.98	53	698.72
29	385.78	54	717.38
30	393.91	55	736.38
31	402.39	56	755.70
32	411.23	57	775.29
33	420.44	58	795.14
34	430.03	59	815.22
35	440.02	60	827.35
36	450.44	61	834.83
37	461.27	62	841.66
38	472.54	63	847.31
39	484.24	64	853.37
40	496.41	65	859.81
41	509.05	66	866.69
42	522.17	67	873.98
43	535.78	68	881.65
44	549.90	69	889.70
45	564.51	70	898.11
46	579.64	..	.....
47	595.27	..	.....
48	611.39	..	.....
49	628.00	..	.....

(82)

84 Number 305,011. Amount $5,000.

The New York Life Insurance Company,

Age 37.

By this policy of insurance,

In consideration of the agreements, statements, representations and warranties submitted to its officers at the Home Office, in the City of New York, in the written Application for this Policy, which are hereby referred to and made a part of this Contract, and in further consideration of the sum of One Hundred and Forty Dollars and Eighty-five Cents, to them in hand paid, at the Office of the Company, in the City of New York, and for the annual payment

Annual Premium, $140.85.

of One Hundred and Forty Dollars and Eighty-five Cents, to be made at said Office on or before the Twenty-fourth day of January, in every year during the continuance of this Policy,

Doth insure the life of Joseph W. Gould—Shipper of Coal—of Pittsburgh—in the County of Allegheny—State of Pennsylvania—(hereinafter called the insured), in the amount of Five Thousand Dollars, commencing on the Twenty-fourth day of January, 1889, at noon.

And the said company doth hereby promise and agree to pay the amount of the said Insurance, at its Office in the City of New York, to the insured's Executors, Administrators or Assigns, upon receipt and approval at said office of proofs, as hereinafter required,
85 of the death, during the continuance of this Policy, of the said insured, deducting therefrom all indebtedness to the Company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted upon the following express Conditions and Agreements: (83)

First. That if the premiums are not paid, as hereinafter provided, on or before the days when due, then this Policy shall become void, and all payments previously made shall be forfeited to the Company, except that (as provided by Act of May 21, 1879, Chap. 47, Laws of 1879 of the State of New York) if this Policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up Policy will be issued, on demand made within six months after such lapse with surrender of this Policy, under the same conditions as this Policy, except as to the payment of premiums, but without participation in profits, for such an amount as the net Reserve on this Policy at the time of lapse, computed by the American Table of Mortality and interest at four and one-half per cent, after deducting all indebtedness to the Company, will purchase as a single premium at the

Examiner, M.

present published rates of the Company, at the age of the insured at the time of lapse; and all right, claim or interest to or in any other paid-up Policy or surrender value, and to or in any temporary insurance, whether or not required or provided for by any statute, is hereby expressly waived and relinquished.

86 Second. That the provisions, requirements and benefits, printed or written by the Company, upon the next page of this Policy, are a part of this Contract, as fully as if they were recited at length over the signatures hereto affixed.

Ordinary Life, Non-forfeiting Limited-Tontine Policy. N. 88-62.

In witness whereof, the said New York Life Insurance Company has, by its President and Vice-president or Actuary, signed and delivered this Contract, this Twenty-fourth day of January, one thousand eight hundred and eighty-nine.

WM. W. BEERS, *President.*

RUFUS W. WEEKS, *Actuary.*

(84) 134*a*.

7—290

Provisions, Requirements and Benefits Referred to in This Policy.

Non-forfeiting Limited-Tontine Policy Provisions.

This Policy is issued on the non-forfeiting limited-tontine policy plan, and particulars of which are as follows:

That the tontine dividend period for this Policy shall be completed on the 24th day of January in the year Nineteen hundred and nine.

That no dividend shall be allowed or paid upon this Policy, unless the insured shall survive until completion of its tontine dividend period, and unless this Policy shall then be in force.

That surplus or profits derived from such Policies on the non-forfeiting limited-tont-ne policy plan as shall not be in force at the date of the completion of their respective tontine dividend periods, shall be apportioned among such Policies as shall complete their tontine dividend periods.

87 That after the completion of the Tontine Dividend Period, provided this Policy shall not have been previously terminated, this Policy shall secure to the insured one of the following benefits: First—to apply the accumulated dividend to the purchase of an Annuity on the life of the said insured in one of the following forms: *a*, an Annuity for the number of years that premiums are payable beyond the Tontine Period, to be used in reduction of subsequent premiums on this Policy, and in case the amount accruing in any year from the Annuity together with dividends that may thereafter be declared on this Policy, shall exceed the amount of premium due thereon, the excess to be paid in cash; or *b*, if the (85) payment of premiums is completed, an Annuity for the whole term of life. Second—to continue the Policy for the original amount and withdraw the accumulated surplus apportioned by the Company to this Policy in cash. Third—to withdraw in cash the entire Equity (that is, the net reserve computed by the American Table of Mortality and interest at four and one-half per cent, and in addition thereto the accumulated surplus aforesaid). Fourth—to convert the entire Equity into a paid-up Policy, without participation in profits, for an amount to be determined by the method then in use by the Company in determining Paid-up policies of this class; provided that should the amount of such paid-up Policy exceed the original amount of the insurance, it is made a condition precedent to its issue: 1st, that a medical examination of the insured,

88 made by an approved examiner upon the blank provided by the Company for that purpose, is furnished by the applicant at his own expense; 2d, that such medical examination is approved by the medical board at the Home Office of the Company, and the risk is recommended by them; and 3d, that this policy is legally surrendered during the life-time of the insured, and within ninety days from the termination of the Tontine Dividend Period. Fifth—the conversion of the entire Equity into a life annuity, upon the life of and payable to the said insured. These benefits are at the op-

tion of the insured, but it is understood and agreed that not less than three months prior to the termination of the Tontine Period, the said insured shall notify the Company, in writing, which benefit is selected and if no such notification shall be received, then, and in that case, the accumulated surplus shall be applied to the purchase of an Annuity in one of the forms stipulated in the "first benefit" named above. (86)

That in the payment of premiums upon this Policy, falling due within the selected Tontine Period, a grace shall be allowed of one month; provided that in all cases when this grace is availed of, a fine at the rate of Ten per cent per annum shall be paid to the Company for the time deferred.

Limit of Travel and Residence.

If the insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward Island, or Newfoundland); or, between the first day of July and the
89 first day of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic Coast; thence running westerly along the said northerly boundary to a point one hundred miles from the Coast; thence in a southwesterly direction, continuing one hundred miles from said Coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the City of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly border of Alabama and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean; or shall enter upon a voyage upon the high seas (except as hereinafter specified);

Occupations and Employments.

or shall be personally engaged in blasting, mining, submarine operations, aeronautic travel or excursions, or the manufacture or transportation of highly inflammable or explosive substances; or in working or managing a steam-engine in any capacity; or as mariner, engineer, fireman, conductor, express messenger, or (87) laborer in any capacity upon service on any sea, sound, inlet, river, lake, or railroad; or shall enter any military or naval or paid first department service whatsoever (the militia, when not in actual service, excepted), without the consent of this Company in each or either of the foregoing cases previously given in writing;

Dueling, Violation of Law, Etc.

90 or if he shall die in, or in consequence of a duel, or the violation of the laws of any nation, state, or province; or if

death shall be caused by or in consequence of the use of intoxicating drink, opium, or other narcotics; or if the first premium herein shall not have been actually paid during the continuance of the life in the same condition of health as described in the application; or if any of the statements or representations made in the application for this Policy shall be found in any respect untrue; then, and in every such case, this Policy shall be null and void, and all payments previously made shall be forfeited to the Company, and no action or right of action shall remain to, or be maintained against this Company by, the assured or any other person, by virtue of this Policy.

Traveling Privileges.

The insured has permission to pass as passenger, by direct route, in first-class vessels, as follows: 1st—to and from Europe (travel and residence wherein is hereby permitted); 2d—to and from California, and along the coasts of Nova Scotia, New Brunswick, and the United States, between Cape Canso and the Rio Grande (provided no part is entered in which residence, at the time of such entrance, is prohibited); 3d—between ports on the East Pacific Coast, north of 32° of north latitude; 4th—between ports on the East Pacific Coast, north of 32° of north latitude, and ports in the Sandwich Islands, China, and Japan. (88)

Powers of Agent.

No agent has power in behalf of the Company to make or modify this or any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, to issue a permit for resi-
91 dence, travel, or occupation, or to bind the Company by making any promise or receiving any representation or information. This power can be exercised only by the President, Vice-president, or Actuary of the Company, and will not be delegated.

Payment of Premiums.

All premiums are due and payable at the Home Office of the Company unless otherwise agreed in writing, but may be paid to agents producing receipts signed by the President, Vice-president, or Actuary, and countersigned by such agents.

Notice When Due.

Notice that each and every payment of premium is due at the date named in the Policy is given and accepted by the delivery and acceptance of this Policy, and any further notice required by any statute is hereby expressly waived. The giving of any other notice, or the acceptance of any premium after it is due, is to be considered as an act of courtesy only and shall not be deemed as establishing a custom or as waiving or disturbing any of the conditions as to payment of premiums thereafter due.

Proofs of Death.

Proofs of death under this Policy shall be furnished to the Company at its office in the City of New York within one year after death, and shall include sworn statements on the Company's forms, as follows: (1) a statement from each claimant; (2) a statement from each physician who attended the deceased within a year before death; (3) a statement from a responsible householder who knew the deceased; (4) a statement from the undertaker; (5) a statement from the clergyman, whenever one officiates; (6) a copy of the verdict and of the evidence on which it was based, duly
92 certified, whenever an inquest has been held. All questions must be fully answered, and the omission of any of the answers or statements required must be (89) satisfactorily explained or supplied by other proofs.

Assignments.

Any assignment of this Policy must be made in duplicate, and both copies must be sent to the Home Office for acknowledgment, one of them to be retained by the Company. Under no circumstances will the Company assume any responsibility for the validity of any assignment. (90)

Abstract (E. & O. E.) of the Application for Insurance in the New York Life Insurance Company.

Policy No. —.

1. Name (in full) of the person applying for insurance on his life: Joseph W. Gould.
2. A. Present residence: Pittsburgh, County of Allegheny, State of Pa.
   B. Post-office Address: 17412 3d Avenue, Pittsburgh, Pa.
3. Occupation or Employment: if more than one, state all: Coal Business and River Captain.
   Note.—It is not a sufficient answer to state (for example) "Merchant," "Mechanic," "Salesman," or "Clerk." The particular branch of business or trade is to be specified, and full particulars given, especially where the occupation is in any way hazardous.

93

4. A. How long have you been engaged in present occupation? A. 4 years.
   B. Are you married? B. Yes.
5. A. Place of Birth? McKeesport, Pa.
   B. Race or Nationality? White.
   C. Born on 7th day of Febry., 1852.
   D. Age nearest Birthday: 37.
6. A. Are your habits at the present time, and have they always been, sober and temperate? Yes.

B. To what extent do you use intoxicating drinks as a beverage? B. Very rarely drink anything.

C. Are you now engaged in any way in the retailing of alcoholic liquors? C. No.

D. Have you ever been so engaged? D. No. (91)

7. A. Are you now insured in this Company, or have you ever been? A. No.

B. If so, state Numbers of Policies and amounts. B. —.

8. A. Have you any other insurance on your life? A. No.

B. If so, state in what companies, when taken, the kinds of policies, and their respective amounts. B. —.

9. A. Has any proposal or application to insure your life ever been made to any company or agent, upon which a policy has not been issued, or upon which a policy has been issued at a higher rate than that applied for? A. No.

94

B. If so, state full particulars, to what company, when, &c. B. —.

10. Where have you resided (during summer and winter) during each of the last ten years? In Pennsylvania.

11. A. Name of an intimate friend: T. J. Wood.

B. His P. O. Address: Pittsburgh.

12. Sum to be insured: $5,000.

Premium— How payable [(Annually, (Semi-annually]* [(or Quarterly.]*

On what table?

Ordinary Life.

[Life —— Premiums.

Endowment, — payable in — years. — Premiums.]*

Note.—Strike out the rates not desired.

13. A. Do you desire a policy on the "Nonforfeiting Limited-Tontine Policy" plan, as set forth in that policy form? (Yes or No.) A. Yes.

B. If so, which Tontine Period do you select? B. I select the 20 year Tontine Period.

14. A. To whom is the insurance applied for to be payable in event of death? (Give name in full.) A. —.

B. Present residence? B. My estate.

C. What relation to you? C. — (92).

15. If the application is for an Endowment Policy, to whom is the Endowment to be payable at its maturity?

95 Note.—This question refers only to policies issued on the Endowment premium-tables, not to policies issued on any Life table (even if Tontine).

16. Any policy issued under this application will contain an agreement that:

[Words and figures enclosed in brackets erased in copy.]

If it shall lapse or become forfeited for the nonpayment of any premium after being in force three full years, a paid-up policy will be issued on demand, made within six months after such lapse with surrender of the policy, under the same conditions as this policy, except as to the payment of premiums, but without participation in profits for such an amount as the net reserve on the policy at the time of lapse, computed by American Table of Mortality and interest at four and one-half per cent, after deducting all indebtedness to the Company, will purchase as a single premium at the present published rates of the Company, at the age of the insured at the time of lapse, if an Ordinary Life Policy, or for such an amount as shall be represented by as many proportional parts of the sum insured as there shall have been complete annual premiums paid thereon when the lapse or default above
96 referred to shall first be made, if a Limited Payment Life Policy or an Endowment Policy.

In consideration of this agreement, do you specifically waive and relinquish all right, claim or interest to or in any temporary insurance, surrender-value, or other paid-up policy, whether or not required or provided for by any statute? Yes (93).

Note.—An affirmative answer to this question is a necessary condition to the issue of the Policy.

I do hereby agree as follows: 1. That the statements and representations contained in the foregoing application, together with those made to the Medical Examiner by me, shall be the basis of the contract between me and The New York Life Insurance Company; that I hereby warrant the same to be full, complete and true, whether written by my own hand or not, and that if the same or any of them are in any respect untrue, the policy which may be issued hereon shall be void, and all moneys which may have been paid on account of such insurance shall belong to said Company. 2. That, inasmuch as only the officers at the Home Office of said Company, in the City of New York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, or information made or given by or to the person soliciting or taking this application for a policy or by or to any other person, shall be binding on said Company, or in any manner affect its
97 rights, unless such statements, representations, or information be reduced to writing, and presented to the officers of said Company, at the Home Office, in this application. 3. That in any distribution or surplus or profits, the principles and methods which may be adopted by said Company for such distribution, and its determination of the amount equitably belonging to any policy which may be issued under this application, shall be and are hereby ratified and accepted by and for every person who shall have or claim any

interest under such (94) policy. 4. That any policy which may be issued under this application shall not be in force until the actual payment to, and acceptance of the premium by said Company, or its authorized agent, during my life-time and good health. 5. That the contract, contained in such policy and in this application, shall be construed according to the law of the State of New York, the place of said contract being agreed to be the Home Office of said Company in the City of New York. 6. That no suit shall be brought against said Company under said contract after the lapse of one year from the time when the cause of action accrues.

Dated at Pittsburgh this 8th day of Oct., 1888.

Signature of the person applying for insurance on his life. (Write the name in full.) JOSEPH W. GOULD.

Witness, —— ——.

Agent, —— —— (95).

98 88-58.

Declarations Made to the Medical Examiner of the New York Life Insurance Company.

The Applicant for Insurance must answer the following Questions, which will be asked him by the Medical Examiner; the Answers form an essential part of the Contract.

1. Have you had, since childhood, any of the following complaints? Answer (Yes or No) opposite each.

	Apoplexy,	No
	Asthma,	No
	Bilious Colic,	No
	Bronchitis,	No
	Cancer,	No
	Dropsy,	No
	Disease of Brain,	No
	Disease of Heart,	No
	Disease of Kidneys,	No
	Disease of Liver,	No
	Disease of Lungs,	No
	Disease of Urinary Organs,	No
	Fistula,	No
	Fits or Convulsions,	No
	General Debility,	No
	Gout,	No
	Insanity,	No
	Jaundice,	No
	Palpitation,	No
	Paralysis,	No
	Piles,	No
99	Pleurisy,	No
	Pneumonia	No (96)
	Rheumatism,	No
	Rupture,	No
	Scrofula,	No
	Smallpox,	No

Skin Disease,	No
Spinal Disease,	No
Spitting or Raising Blood,	No
Syphilis,	No
Yellow Fever,	No

Give full particulars of any illness you may have had since childhood.

Typhoid fever when 19 years old—2 months sick. Good recovery.

When were you last confined to the house by illness? As stated above.

2. Have you ever had severe headaches, vertigo, fits or any nervous or muscular trouble?

3. A. Are you subject to cough, expectoration, palpitation, or difficulty of breathing? A. No.

B. Have you ever been? If so, to which, when, and full details. B. No.

4. Are you subject or predisposed to Dyspepsia, Dysentery, or Diarrhœa?

5. Have you ever met with any accidental or serious personal injury? No.

6. Have you ever been seriously ill? If so, when, with what, and who was the medical attendant?

(State his name and residence.) No. Except with the typhoid fever. Dr. M. Knox, McKeesport, Pennsylvania.

100 7. A. Name and address of your usual medical attendant. A. Dr. J. R. McCord, Pittsburgh, Pa.

B. When and for what have his services been required? B. (97).

8. Have you consulted any other medical man? If so, when, and for what? No.

9. Has any proposal or application to insure your life ever been made to any company or agent upon which a policy has not been issued? If so, state full particulars: No.

10. Has any physician given an unfavorable opinion upon your life with reference to Life Insurance? If so, state particulars: No.

11. The Medical Examiner will please obtain from the party answers in full detail to the following queries. (In giving cause of death avoid all indefinite terms, as "General Debility," "Change of Life," "Fever," "Dropsy," "Exposure," or "Accident." If the word "Childbirth" is used, state how long after the delivery death occurred, and whether there were any symptoms of disease of the lungs.)

	Age (if living).	Condition of health.	Age at death.	Cause of death.	How long ill.	Previous health.
Father.....	67	Good	..	Consumption	2 or 3 years	Good
Mother.....	..	..	40	....	....	
2 Brothers.....	38	Good				
	23	"				
2 ½.....	18, 20	"	30	Don't know	One Year	Good—had
3 Sisters.....	42	"		cause		cough.
	25	"				
1 ½.....	19	"	..	Dropsy		
Father's Father.	..	..	Ab't 70	Don't know	Don't know	Good
Father's Mother.	..	..	Don't know	"	"	Don't know
Mother's Father.	..	..	"	"	"	" "
Mother's Mother.	..	..	"	"	"	" "

101 12. A. Has either of your parents, brothers, sisters, grandparents, uncles or aunts now, or ever had consumption, cancer, gout, scrofula, diabetes, rheumatism, epilepsy, insanity, or other hereditary disease?

A. Mother died of consumption.

——. B. If so, give full particulars of each case.

B. ——.

I hereby declare that I am the person who has made and signed the accompanying application for insurance in the New York Life Insurance Company, dated Oct. 8, 1888; that I am temperate in my habits and am, to the best of my knowledge and belief, in sound physical condition and a proper subject for life insurance.

JOSEPH W. GOULD.

88-42 G. E. (99)

[*Exhibit "B" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Assignment and Transfer.*]

For Value Received I hereby assign and transfer unto Effie J. Gould of Pittsburgh, Pa., the Policy of Insurance known as No. 305011, issued by the New York Life Insurance Company, upon the life of Joseph W. Gould, of Pittsburg Pa. and all dividend, benefit, and advantage to be had or derived therefrom, subject to, the conditions of said Policy, and to the Rules and Regulations of the Company.

Witness my hand and seal, this 27th day of June one thousand eight hundred and nine'-three.

JOSEPH W. GOULD.
S.

102 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

HENRY C. LYON,
Notary Public.

The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

JOHN A. McCALL, *Pres.*,
Per LAWES.

New York, June 30th, 1893.

Notice.—The rules of the Company require that Assignments of Policies issued by it shall be made in duplicate; that both copies shall be sent to the Home Office; and that one copy shall be retained by the Company and the other returned: (100)

The Company has no responsibility for the validity of any assignment.

The acknowledgment must be made before an officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the Clerk of a Court of Record, under his official seal.

Exhibit B. (101)

103 [*Exhibit "C" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, December* 10, 1908, *Weeks to Gould.*]

New York Life Insurance Company,
346 & 348 Broadway, New York.

Darwin P. Kingsley, President.

Mc
Actuary's Department

Rufus W. Weeks,
Vice-President and Chief Actuary

Arthur R. Grow,
Arthur Hunter,
Adolph Davidson,
} Actuaries.

NEW YORK, Dec. 10, 1908.

Mr. Joseph W. Gould, 307 Water St., Pittsburg, Pa.

DEAR SIR: The 20 Year Tontine Dividend Period of Policy No. 305,011 on the life of yourself, will be completed Jan. 22, 1909. It gives us pleasure to hand you statement showing the Settlements from which a selection is to be made in accordance with the provisions of the policy, if it is in force at the end of Period.

The policy may be continued for the original amount, and—

(A)	The Dividend apportioned by the Company may be withdrawn in Cash.....	Cash Dividend $871.70
or (B)	The Dividend may be converted (subject to evidence of sound health satisfactory to the Company) into a Paid Up Addition to the policy.....	Paid-up Addition $0000.00
or (C)	The Dividend may be converted into an Annuity on the life of the Insured, first payment to be made ——..... and annually thereafter during his life.....	Annuity. $————
or	The Dividend may be converted into a permanent Annual Reduction in subsequent Premiums payable upon this policy, first payment to be made Jan. 22, 1909	$63.70

Or, the policy may be discontinued, and— (102)

104

(M)	The Total Value may be withdrawn in Cash..... (Total Value includes Cash Dividend.)	Total Cash $2,479.70
or (N)	The Total Value may be converted into Nonparticipating Paid-up Insurance payable at death only. If the amount of the Paid-up policy exceeds the amount of the original policy, evidence of sound health satisfactory to the Company must be furnished.....	Total Paid-up Insurance, $4,200.00
or (O)	The Total Value may be converted into an Annuity on the life of the Insured, first payment to be made Jan. 22, 1910, and annually thereafter during the life.....	Total Annuity $195.40

Notification of choice of settlement is to be signed by Effie J. Gould, assignee.

Yours very truly,

RUFUS W. WEEKS,
Vice-President and Chief Actuary.

E. & O. E.

Exhibit C. (103)

[*Exhibit "D" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, February* 12, 1909, *Gould to N. Y. Life Ins. Co.*]

(Copy.)

ORLANDO, FLA., Feb. 12th, 1909.

New York Life Ins. Co., Pittsburg, Pa.

Re My Policy 305,011.

GENTLEMEN: In regard to the maturing of the above policy, I elect Option M., and desire that you draw this check, $2,479.70, payable to my order and hand it to Mr. Moreland, c/o River Coal
105 Company, Pittsburgh, Pa., who will deposit same in my bank, and who will also hand you the above policy for cancellation.

Yours truly,

J. W. GOULD.

Exhibit D. (104)

[*Exhibit "E" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, May* 27, 1909, *Dunlevy to N. Y. Life Ins. Co.*]

(Copy.)

OAKLAND, CAL., 5/27/09.

The New York Life Ins. Co., New York, N. Y.

GENTLEMEN: Your San Francisco representative advised me to write you for copy of Policy 305,011 made out in my favor & which matured Jan'y 20, 1909. My father J. W. Gould who is located in Pgh., Pa. has sent me two of the enclosed blanks to sign but if it is possible that I can collect same I do not feel justified in signing it even to him as I can prove that he told me on different occasions that when it matured I should have it. Kindly advise me of what prospects I have of collecting same & if any kindly take matter up with your representative here in San Francisco & when I hear

106 from you will call & see them. If there is no chance of my collecting same kindly keep the above confidential.
[And greatly oblige.]*
Yours respectfully,

MRS. EFFIE J. GOULD DUNLEVY.
(S.)

9th & Oak, Oakland, Cal., c/o Madison Park Apartments.

Exhibit E. (105)

[*Exhibit "F" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Copy of Assignment.*]

(Copy.)

For value received I hereby assign and transfer unto Joseph W. Gould of 7th Ave. Hotel, Liberty Ave., Pittsburg, Pa., the Policy of Insurance known as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould, of Pittsburg, Pa., and all dividend benefit, and advantage to be had or derived therefrom, subject to the conditions of the said Policy, and to the Rules and Regulations of the Company. This assignment is to take effect as of the 20 January, 1909.

Witness — hand and seal, this — day of ——, — nine hundred —.

—— ——,
—— ——,

STATE OF ——,
County of ——, *ss:*

On this — day of ——, 190–, before me personally came
107 —— ——, to me known to be the individual described in and who executed the foregoing assignment, and acknowledged that — executed the same.

—— ——.
—— ——.

The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

—— ——.

New York, ——, 190-.

NOTICE.—The rules of the Company require that Assignments of Policies issued by it shall be made in duplicate; that both copies shall be sent to the Home Office; and that one copy (106) shall be retained by the Company and the other returned.

The Company has no responsibility for the validity of any assignment.

[* Words enclosed in brackets erased in copy.]

The acknowledgment must be made before an Officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the Clerk of a Court of Record, under his Official seal.

Branch Office.

—— ——, *Cashier.*

Forwarded from —— 190-.

Exhibit F. (107)

108 [*Exhibit "G" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, June* 10, 1909, *McCall to Dunlevy.*]

(Copy.)

E. V. W.—K.

NEW YORK, June 10th, 1909.

Mrs. Effice J. Gould Dunlevy, c/o Madison Park Apartments, Ninth & Oak, Oakland, California.

Re Policy No. 305,011.

DEAR MADAM: We beg to acknowledge receipt of your favor of May 27th, with reference to the above policy issued on the life of Joseph W. Gould. The Deferred Dividend Period under this policy expired January 22nd, last. Mr. Gould filed with us a selection of the Cash Value at that time. This Cash Value amounted to $2,479.70 and as the policy stood on our records as being assigneg to yourself we forwarded our check for the above amount to the Pittsburg office to be delivered to you subject to their obtaining from you a receipt for this amount, the policy, the original assignment in favor of yourself and your signature to the selection of option made by the insured. In view of your letter of May 27th just received we are recalling this check from our Pittsburgh Office to be held here until we
109 hear further from you.

Yours truly,

JOHN C. McCALL, *Secretary,*
Per —— ——, *Superintendent.*

Exhibit G. (108).

[*Exhibit "H" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, June* 23, 1909, *Dunlevy to N. Y. Life Ins. Co.*]

(Copy.)

OAKLAND, CAL., June 23, 1909.

New York Life Ins. Co., New York, N. Y.

GENTLEMEN: I am in receipt of yours of June 10th referring to cash surrender value under policy No. 305,011 with your company. As yet I have been unable to find the policy and as I am away from home am not sure where it is.

In case I cannot locate it kindly advise me what affidavits are necessary. Will it be possible for me to convert the proceeds of this policy into a paid up policy payable to me at the death of the insured? Or could I draw the dividend, allowing the original policy to stand as at present? Trusting to hear from you soon I remain,

Yours sincerely,

(S.) Mrs. E. J. GOULD DUNLEVY.

Exhibit H. (109).

110 [*Exhibit "I" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, July* 22, 1909, *Actuary to Dunlevy.*]

(Copy.)

G-N-M.

NEW YORK, July 22, 1909.

Mrs. E. J. Gould Dunlevy, Oakland, Calif.

405,011

Re Policy No. [305,011].*

DEAR MADAM: We are in receipt of your favor of the 23rd ult., in reference to the above numbered policy, that

In reply we would call attention to [the]* fact that the 20-Year Tontine Period of this policy expired Jan. 22nd, 1909, and as no further premiums have been paid the policy lapsed as of that date. Selection of option *shall* have been filed with the Company before that date, in accordance with the policy's terms.

We are willing, however, to allow at the present time a selection of option "A," under which the accumulated surplus of $871.70 may be withdrawn, but in order to select this option it will be necessary to duly reinstate the policy and furnish the Company with satisfactory evidence of the insured's present insurability by one of our regular medical examiners, without expense to the company, and pay premiums to Jan. 22nd, 1910.

Or, we will allow selection of option "N," that is, non-participating paid-up insurance of $4,200, but in order to select this option
111 it will also be necessary that we be furnished with the evidence of insurability referred to above.

Both of these offers will hold good for thirty days from the present date and if the Insured at present lives in Pittsburgh or the vicinity and will communicate with our Branch Office at the Diamond Bldg., Liberty & 5th Aves., Pittsburg, Pa., the Cashier (110) at that Branch Office will give him the necessary information relative to the name and address of our medical examiner by whom the examination may be made.

Very truly yours,

—— ——, *Actuary.*

Exhibit I. (111).

[* Words and figures enclosed in brackets erased in copy.]

[*Exhibit "J" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, August 20, 1909, Reese to McCall.*]

(Copy.)

PITTSBURGH, PA., Aug. 20th, 1909.

Mr. John C. McCall, Secretary of the New York Life Insurance Co., 346 and 348 Broadway, New York, N. Y.

DEAR SIR: On January 24, 1889, your company issued to Joseph W. Gould of this City, your policy No. 305,011, on his life in the sum of ($5,000). The policy is now paid out, all premiums having been fully paid thereon.

On June 27th, 1893, Capt. Gould assigned the above policy
112 to his daughter, Effie J. Gould then of this City; the daughter subsequently married and is now residing somewhere in the State of California, her Post Office address not being known to her father.

At the time the policy was assigned, Capt. Gould informs me, that it was not his intention to pass any title thereto to his daughter, except in the event of his death before maturity thereof. The policy never was delivered to the daughter to whom it was assigned, but has always been and now is in the possession of Capt. Gould the insured and he has paid all premiums maturing thereon since said assignment.

By authority of Joseph W. Gould the insured, under the above mentioned policy and at his request I write to notify your Company that no money is to be paid the said Effie J. Gould or her assigns on said policy by virtue of the assignment thereof to her, and he now requests and demands that the surrender value of said policy be paid to him notwithstanding said assignment.

I would thank you for an acknowledgment of this notice.

Very truly,

L. B. D. REESE,
A'tty for Joseph W. Gould.

Mailed Aug. 20, 1909.
Exhibit J. (112).

113 [*Exhibit "K" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, August 30, 1909, Actuary to Reese.*]

(Copy.)

G-G-H.

NEW YORK, August 30th, 1909.

Mr. L. B. D. Reese, #1016 Frick Building, Pittsburg, Pa.,

Re Policy 305,011, Gould.

DEAR SIR: I have your letter of August 20th, in regard to the assignment of this policy.

You state in your letter that Mr. Gould has no knowledge of the whereabouts of his daughter, and for your information we would say

that we have received a number of letters from her dated at 9th and Oak Streets, Oakland, Cal. Our repliees have been sent to the same address, and have evidently reached her. The assignment which we have on record appears to be a genuine and absolute assignment to Effie J. Gould, and is dated June 30th, 1893. In view of this assignment, we cannot, of course, pay the money to Mr. Gould until the matter is cleared up. As you state that Mr. Gould is now inclined to dispute the validity of the assignment, we would suggest that claimants take the matter into Court in order to have the question of ownership cleared up.

As we have no legal evidence of your power of attorney for Mr. Gould, the Company will require a copy of the power of at-
114 torney, or if you prefer, we will file any letter that Mr. Gould may write us regarding the policy. I would suggest that you either have your letter of August 20th, 1909, re-written and signed by Mr. Gould before a Notary, duly acknowledged in accordance with the laws of Pennsylvania, or else that you file a duly acknowledged power of attorney for Mr. Gould. In the meantime, we will pay no money to anyone on account of this policy, and the equities of the (113) policy will be those stated in the policy itself.

I enclose herewith copy of a letter I have to-day written to Mrs. Dunlevy.

Yours very truly,

—— ——, *Actuary.*

(Encl.)

Exhibit K. (114)

[*Exhibit "L" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, August* 25, 1909, *Dunlevy to Haskell.*]

(Copy.)

OAKLAND, CAL., 8/25/09.

Norman R. Haskell, Supt. New York Life Ins. Co., New York City.

DEAR SIR: I am in receipt of letter from your Actuary Department under date of Aug. 18 & enclosing copy of their letter to me as of July 22nd.

As it appears that there is considerable red tape necessary to reinstate this policy, as it has apparently lapsed, I think I will
115 take the cash surrender value as outlined in your letter to me of June 10th.

I have been unable to locate the policy and would like to know what papers will have to be executed in order to close the matter.

Respt. yours,

(S.) MRS. E. J. G. DUNLEVY.

Exhibit L. (115)

[*Exhibit "M" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, August* 30, 1909, *Actuary to Dunlevy.*]

(Copy.)

G-G-H.

NEW YORK, August 30th, 1909.

Mrs. E. J. G. Dunlevy, 9th & Oak Streets, Oakland, Cal.

Re Policy 305,011, Gould.

DEAR MADAM: I have your letter of August 23rd, in regard to the above policy. I also have a letter under date of August 30th, from Mr. L. B. D. Reese, who acting as Attorney for your father, states that your father disputes the validity of the assignment made to you in 1893.

For your information, I am enclosing herewith copy of a letter written to-day in answer to Mr. Reese's letter, which also fully covers the points raised in your letter of the 23rd instant.

The offers communicated to you in our letter of July 23rd were limited to 30 days from that date. The time having expired, the Company hereby notified you that all offers made to you for
116 settlement of the policy are withdrawn and the policy will be settled in accordance with its terms.

Very truly yours,

—— ——, *Actuary.*

(Encl.)
Exhibit M. (116)

[*Exhibit "N" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, September* 3, 1909, *Reese to Grow.*]

(Copy.)

PITTSBURGH, PA., Sept. 3rd, 1909.

In re Policy No. 305,011, Gould.

Mr. A. R. Grow, New York Life Insurance Co., 346-348 Broadway, New York City.

DEAR SIR: I beg to acknowledge receipt of your favor of the 30th ult. in relation to the above policy issued on the life of Joseph W. Gould, and I thank you for the address of Mrs. Dunlevy, daughter of Mr. Gould. I have this day written her and there is a bare possibility that we may get the matter adjusted so as to give you no further trouble.

In the meantime, I telephoned Capt. Gould's hotel yesterday and learned that he is out of the city without leaving any address, but will no doubt return in a few days, and I shall be glad to comply with your suggestion in having him sign and acknowledge the letter I wrote you on the 20th ult.

117 I am glad to know that you will not pay any money on this policy until the controversy of ownership is cleared up.

Yours truly,

L. B. D. REESE,
Att'y for Joseph W. Gould.
(S.)

Exhibit N. (117)

[*Exhibit "O" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, September 8, 1909, Gould to McCall.*]

(Copy.)

PITTSBURGH, PA., Sept. 8th, 1909.

Mr. John C. McCall, Sec'y of New York Life Insurance Co., 346-348 Broadway, New York City.

DEAR SIR: On January 24th, 1889, your company issued to me your policy No. 305,011 on my life in the sum of Five Thousand Dollars ($5,000). The policy is now paid out, all premiums having been fully paid thereon.

On June 27th, 1893, I assigned the above policy to my daughter, Effie J. Gould, then of this city, since married to one Dunlevy, who now resides, as I am informed by copy of a letter sent to my attorney, L. B. D. Reese, in Oakland, California. Prior to the information contained in your letter to Mr. Reese under date of August 30th, I was not aware of her postoffice address.

118 At the time the policy was assigned, it was not my intention to pass any title thereto my daughter, except in the event of my death before maturity. My reason for assigning it was that I contemplated marrying again and I wished to make this provision for my daughter in case of my death. The policy was never delivered to my daughter to whom it was assigned, but has always been, and now is, in my possession and I have paid all premiums maturing thereon since the above mentioned assignment.

I therefore write to notify your company that no money is to be paid to the said Effie J. Gould, now Effie J. Dunlevy, or her assigns, on said policy by virtue of the assignment thereof to her, and I now request and demand that the surrender value of said policy be paid to me notwithstanding said assignment.

I would thank you for an acknowledgment of this notice.

Very truly yours,

(Signed) JOSEPH W. GOULD. (118)

Attest:
L. B. D. REESE.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, the undersigned, a Notary Public in and for the County of Allegheny and State of Pennsylvania the above-named Joseph W. Gould, who, in due form of law, acknowledged the foregoing letter to be his act and deed.

Witness my hand and Notarial seal this 8th day of September, A. D. 1909.

ALICE E. DUFF,
Notary Public.

My commission expires Jan. 21, 1911. (119)

119 [*Exhibit "P" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, October 6, 1909, Windrem to Haskell.*]

(Copy.)

POINT RICHMOND, CAL., 10/6/09.

Normal R. Haskell, Esq., New York City.

DEAR SIR: I have been retained by Mrs. R. M. Dunlevy to represent her regarding the collection of Policy No. 305,011, issued on the life of Joseph W. Gould and assigned to Effie J. Gould now Mrs. Dunlevy, June 30th, 1893.

Will you please send me a copy of the policy and also of the assignment at your earliest convenience and oblige.

Yours very truly,

LEE D. WINDREM.
(S.)

Exhibit P. (120)

[*Exhibit "Q" to Answer to Interrogatories in Boggs & Buhl vs. Dunlevy—Letter, October 25, 1909, McCall to Windrem.*]

(Copy.)

E. V. W.—MT.

October 25th, 1909.

Mr. Lee D. Windrem, Point Richmond, Cal.

Re Pol. No. 305,011—Gould.

DEAR SIR: Your favor of October 6th regarding this policy
120 has been duly received and as requested we hand you herewith a copy of the assignment referred to. We are enclosing a copy of the policy itself. This policy together with the original assignment are now in the insured- possession so he advises us, same never having been delivered by him to Mrs. Dunlevy.

Yours truly,

JOHN C. McCALL,
Second Vice-Pres.,

Per —— ——,
Superintendent.

Exhibit Q. (121)

In the Court of Common Pleas No. 4 of Allegheny County, Penna.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Rules for Judgment [in Boggs & Buhl vs. Dunlevy].

To William B. Kirker, Esq., Prothonotary:

Enter rule on Joseph W. Gould and the New York Life Insurance Company for judgment on admission contained in the respective answers filed separately by the garnishees and specify as follows:

First. The New York Life Insurance Company admit- having in its possession a check to the order and payable to Effie J. Gould, now Dunlevy, the defendant, for the sum of about Twenty-four Hundred ($2,400) Dollars, and prays the direction of the Court
121 in premises.

Second. The conclusion, as stated in the answer of the New York Life Insurance Company, respect*ively* shows that it holds the amount as hereinbefore stated, subject to the only order and release of this defendant and surrender of the policy.

Third. The answer of Joseph W. Gould is insufficient to prevent judgment against his co-garnishee, in that the allegations of any interest he may have in the fund is based solely on his supposed right to revoke a former deed of conveyance and surrender.

Fourth. The acknowledged assignment, dated June 30th, 1893, relieves the New York Life Insurance Company from every liability, under the terms of the written contract attached, to Joseph W. Gould, and makes this defendant the bona fide holder and the owner of the securities. (122)

Fifth. The answer of Joseph W. Gould is inconsistent with the answer of his co-garnishee, the New York Life Insurance Company, as it only contains specifications of the right of redemption or the revocation of his own act after a lapse of seventeen years.

Wherefore, upon the admissions of the New York Life Insurance Company, the insonsistent answer of Joseph W. Gould is sufficient to warrant judgment to be entered for the plaintiff.

S. H. HUSELTON,
Attorney for Plaintiff.

Filed January 17th, 1910. (123)

122 [*Petition for Rule in Gould vs. Dunlevy et al. to Show Cause Why They Should Not Proceed to Interplead Together, and Order Thereon in Boggs & Buhl vs. Dunlevy.*]

In the Court of Common Pleas No. Four of Allegheny County, Penna.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

To the Honorable the Judges of said Court:

The petition of the New York Life Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York and one of the Garnishees in the above-entitled execution attachment proceedings, respectfully represents:

(1) In the year 1889, to wit, on January 22nd, your petitioner duly entered into a contract with Joseph W. Gould, the father of Effie J. Dunlevy, the defendant above named, and one of the garnishees in the above-entitled proceeding, by the terms of which contract your petitioner undertook to and did insure the life of the said Joseph W. Gould, as evidenced by its policy, No. 305,011. Said policy provided, inter alia, for the distribution of certain benefits to the insured at the termination of a Tontine Period named therein, which benefits were in the form of a cash surrender value
123 and amount to the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars.

(2) In the year 1893, to wit, on June 27th, the said Joseph W. Gould made and executed a certain written instrument purporting to be an assignment of said policy to his daughter, Effie J. Gould, the defendant above named, who was at that time thirteen years of age. The following is a true copy of said instrument, the original of which was filed with your petitioner, the New York Life Insurance Company. (124)

For value received, I hereby assign and transfer unto Effie J. Gould, of Pittsburgh, Pa., the policy of insurance known as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould, of Pittsburgh, Pa., and all dividend, benefit and advantage to be had or derived therefrom, subject to the conditions of the said policy, and to the rules and regulations of the Company.

Witness my hand and seal, this 27th day of June, one thousand eight hundred and ninety-three.

JOSEPH W. GOULD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me, personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment and acknowledged that he executed the same.

HENRY C. RYAN,
Notary Public.

124 The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

JOHN A. McCALL,
Per HAWES.

New York, June 30, 1893.

NOTICE.—The rules of the Company require that assignments of policies issued by it shall be made in duplicate; that both copies shall be sent to the home office; and that one copy shall be retained by the Company and the other returned.

The Company has no responsibility for the validity of any assignment.

The acknowledgment must be made before an officer duly authorized to administer oaths, and his authority and the genuineness (125) of his signature must be attested by the clerk of a court of record, under his official seal.

Forwarded from —— Branch Office.

——, 190–,

—— ——, *Cashier.*

(3) The said Effie J. Gould named in the foregoing instrument has since intermarried with R. M. Dunlevy and is the same person as Effie J. Dunlevy, the defendant above named.

(4) The Tontine Period provided for in said policy expired on January 22nd, 1909, subsequent to which time your petitioner issued its check to the order of Effie J. Gould, Assignee for the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars, to be delivered to her in exchange for
125 certain papers including the original policy of insurance and the necessary receipts.

(5) Before said check had been delivered, however, your petitioner received a communication from Joseph W. Gould, claiming for himself the fund in your petitioner's hands, a copy of which communication is as follows:

Copy.

L. B. D. Reese,

Attorney at Law,

1016 Frick Building.

Tel. 2292.

PITTSBURGH, PA., September 8th, 1909.

Mr. John C. McCall, Sec'y of New York Life Insurance Company, 346-348 Broadway, New York City.

DEAR SIR: On January 24th, 1889, your company issues to me your policy No. 305,011 on my life in the sum of Five Thousand Dollars ($5,000.00). The policy is now paid, all premiums having been fully paid thereon. (126)

On June 27th, 1893, I assigned the above policy to my daughter Effie J. Gould, then of this City, since married to one Dunlevy, who now resides, as I am informed by a copy of a letter sent to my attorney, L. B. D. Reese, in Oakland, California. Prior to the information contained in your letter to Mr. Reese under date of August 30th, I was not aware of her postoffice address.

At the time the policy was assigned, it was not my intention to pass any title thereto to my daughter, except in the event of my death before maturity. My reason for assigning it was that I contemplated marrying again and I wished to make this provision for my daughter in case of my death. The policy was never delivered to my daughter, to whom it was assigned, but has always been, and now is, in my possession and I have paid all premiums maturing thereon since the above-mentioned assignment.

126

I therefore write to notify your company that no money is to be paid to the said Effie J. Gould, now Effie J. Dunlevy, or her assigns, on said policy by virtue of the assignment thereof to her, and I now request and demand that the surrender value of said policy be paid to me notwithstanding said assignment.

I would thank you for an acknowledgement of this notice.

Very truly yours,

JOSEPH W. GOULD. (S.)

Attest:

L. B. D. REESE.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, the undersigned, a Notary Public in and for the County of Allegheny and State of Pennsylvania, the above named Joseph W. Gould, who in due form of law, acknowledged the foregoing letter to be his act and deed. (127)

Witness my hand and Notarial Seal this 8th day of September, A. D. 1909.

[SEAL.]

(6) Your petitioner is informed that Effie J. Dunlevy the
127 defendant above named, is a resident of the City of Oakland in the State of California, and that in the year 1910, to wit, on January 14th, she instituted a suit in the Superior Court of the State of California in and for the County of Marin, against your petitioner, the New York Life Insurance Company, in which suit she seeks to recover the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars on account of policy No. 305,011, issued by your petitioner upon the life of Joseph W. Gould.

(7) Your petitioner is informed that both the original policy No. 305,011, issued by your petitioner, and the duplicate of the assignment above referred to are at the present time in the custody and possession of the said Joseph W. Gould.

(8) Your petitioner is ready and desirous of making immediate payment of the fund of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars to the party or parties lawfully entitled thereto and has no interest therein or claim thereto.

Wherefore, your petitioner prays your Honorable Court for a rule on said Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of petitioner belongs, and why your petitioner should not be permitted, when it is determined to whom the money ought to be paid, to pay the said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into court for
128 the benefit of such person as shall appear to be entitled thereto, and for such further orders in the premises as to your Honors may seem necessary. (128)

NEW YORK LIFE INSURANCE COMPANY,
By GORDON & SMITH, *Its Attorneys.*

STATE OF NEW YORK,
City and County of New York, ss:

On this 2nd day of February, 1910, before me personally appeared Seymour M. Ballard, Secretary of the New York Life Insurance Company, the petitioner within named, who being by me duly sworn according to law deposes and says that he is the Secretary of the New York Life Insurance Company and familiar with its business, and that the facts stated in the foregoing petition are true and correct.

SEYMOUR M. BALLARD.

Subscribed and sworn to before me this 2d day of February, 1910.
[SEAL.] RALPH FREEMAN,
Notary Public.

Order.

And now, to wit, Feb'ry 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in open Court, upon consideration thereof and on motion of Gordon & Smith, attorneys for petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands
129 of the New York Life Insurance Company belongs, and why said Company (129) should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,-479.70) Dollars into court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service *or* said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of the same by mail or registered mail, to her . to her last know- address.

Rule returnable the 26th day of Feb., 1910.

BY THE COURT.

Filed Feb. 5th, 1910. (130)

[*Answer of Joseph W. Gould to Rule to Show Cause in Boggs & Buhl vs. Dunlevy.*]

In the Court of Common Pleas No. Four of Allegheny County.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Answer of Joseph W. Gould to the Rule Granted, February 5th, 1910, to Show Cause Why Respondent and Others Should not Interplead Together for the Purpose of Ascertaining to Whom the Money, Now in the Hands of the New York Life Insurance Company, Should be Paid.

130 STATE OF CALIFORNIA,
County of Los Angeles, ss:

Joseph W. Gould, being duly sworn according to law, deposes and says that on the 24th day of January, 1889, the New York Life Insurance Company issued on his life their policy No. 305,011 in the sum of Five Thousand Dollars ($5,000), wherein said Company agreed to pay to his executors, administrators or assigns, the sum of Five Thousand Dollars ($5,000) upon receipt and approval at said office of proofs of his death during the continuance of said policy,

after deducting therefrom all indebtedness to said company, together with any balance of premiums remaining unpaid, and with the surrender of said policy. On or about June 27th, 1893, being desirous of assigning said policy conditionally to his daughter, Effie J. Gould, now intermarried with R. M. Dunlevy, respondent called at the office of the New York Life Insurance Company and requested R. H. McCreary, the agent then in charge of said office, to have said policy assigned to respondent's daughter, the said Effie J. Gould (now Dunlevy), on condition that he should die before said policy was paid in full, desiring to reserve to himself the right to collect any money to be paid on said policy at the maturity thereof (131) if respondent should so long live. The agent of said company had said assignment prepared and respondent signed the same on his assertions that it was an assignment to respondent's said daughter of the said policy only on the condition that respondent
131 should die before the maturity of said policy or before all the premiums were paid thereon. Respondent did not read the assignment before executing the same, relying on the statement of the said McCreary, the agent of said company, that he was assigning it conditionally in the manner hereinbefore stated. Respondent had no intention of making an absolute assignment of said policy, such as now appears to have been made, to his daughter Effie J. Dunlevy, or to any other person.

The said policy was never delivered to the said Effie J. Gould (now Dunlevy), to whom it was assigned, but has always been and is now in the possession of respondent, and respondent has paid all premiums maturing on said policy since said assignment, and at maturity he supposed that he would have no difficulty in collecting the amount of the surrender value of said policy but was met with said assignment.

On August 20th, 1909, respondent, through his attorney L. B. D. Reese, notified the said New York Life Insurance Company not to pay any moneys due thereon unto the said Effie J. Dunlevy or to any person representing her; and soon thereafter respondent notified said company by letter to pay no moneys due or to become due on said policy to the said Effie J. Gould (now Dunlevy) or to any person representing her. Respondent denies that the said Effie J. Gould (now Dunlevy) has any interest in said policy, and avers that whatever there is due thereon belongs to respondent and not to the said Effie J. Gould (now Dunlevy).

Respondent avers that he would not have executed said
132 assignment had he not been informed by said McCreary, the agent of said company, that he was making a conditional assignment of said (132) policy, that the same was to be effective in case of respondent's death only before the maturity thereof, and to be void in case respondent should be living at the time said policy should be paid in full, that is at the maturity thereof.

Respondent further avers that said Effie J. Gould (now Dunlevy) had no knoweldge whatever of the assignment of said policy to her until so notified by the said New York Life Insurance Company after the maturity of said policy.

And respondent further avers that the said company knew, or ought to have known through its agent at Pittsburgh, the said R. H. McCreary, that said policy was assigned to his daughter on condition that if respondent should die before the maturity thereof that said assignment was to be an absolute one, otherwise the surrender value of said policy was to be paid respondent, and avers that he was misled by said company's agent in the making of said absolute assignment; and further avers that neither said policy nor the assignment thereof was at any time since the issuing of said policy or said assignment in the possession of the said Effie J. Gould (now Dunlevy), but that the said policy and the said assignment has always remained in the possession of this respondent, and he denies that the said Effie J. Gould (now Dunlevy) ever paid any consideration to respondent for the assignment thereof; and that said assignment was made only for the purpose of protection to
133 the said Effie J. Gould (now Dunlevy) in case of respondent's death before the maturity of said policy.

By reason of the matters hereinbefore set forth, respondent avers that he is entitled to have the surrender value of said policy paid to him in full, to wit, the sum of $2,479.70, and that said sum, nor any part thereof, should be paid to the said Effie J. Gould (now Dunlevy). (133)

JOSEPH W. GOULD.

Sworn to and subscribed before me this 14th day of February, 1910.

[SEAL.] MARY E. NUNEZ,
Notary Public in and for County of Los Angeles, State of California.

My commission expires Feb'y 25th, 1913.

Filed Feb. 19, 1910. (134)

[*Answer of Boggs & Buhl to Petition of N. Y. Life Ins. Co. in Boggs & Buhl vs. Dunlevy.*]

In the Court of Common Pleas No. Four of Allegheny County.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Answer of Attachment Creditor to Petition.

Boggs & Buhl, Incorporated, execution attachment creditor in the above-stated case, by its attorney, S. H. Huselton, makes answer to the petition of the New York Life Insurance Company,
134 Garnishee, and for matters therein respectfully sets forth as follows:

First. That a rule for judgment is pending on behalf of the attachment creditor.

Second. That an action has been instituted by this defendant against the New York Life Insurance Company, in the Superior Court of California, in which said action the right of the fund will be determined.

Third. The New York Life Insurance Company is not a party to the fund in question, and its action to suggest an interpleader would obviate the attachment creditor's right in its rule for judgment.

Fourth. That the attachment creditor will admit the right of the New York Life Insurance Company, Garnishee, to pay the money into Court, and to be further relieved from responsibility.

Wherefore the rule on the part of the New York Life Insurance Company as to the framing of an issue to determine the question of ownership of the fund, should be discharge and that the said garnishee be directed to pay the said fund into court as is set forth in the prayer of its petition.

S. H. HUSELTON,
Attorney for Boggs & Buhl.

Filed Feb'y 26, 1910. (135)

135 In the Court of Common Pleas No. Four of Allegheny County, Pa., First Term, 1910.

No. 253.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Affidavit of Service upon Effie J. Dunlevy of Notice, Petition, and Order of Court [*in Boggs & Buhl vs. Dunlevy*].

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

T. W. McFarland, being duly sworn, deposes and says that he is a male person over the age of twenty-one years and not a party to nor interested in the above-entitled case.

That on the 18th day of February, 1910, at the City and County of San Francisco, in said State of California, affiant personally served the annexed notice, petition and order upon Effie J. Dunlevy, the defendant named therein, by personally delivering to and leaving with said Effie J. Dunlevy a true and correct copy of said annexed notice and petition and order.

And further affiant saith not.

T. W. MACFARLANE.

Subscribed and sworn to before me this 18th day of February, 1910.

[SEAL.] HENRY P. TRICOU,
Notary Public in and for the City and County of San Francisco, State of California. (136)

136 *Copy of Notary's Certificate.*

County Clerk General Dept Blank Form No. 137. B. & P.°°

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and ex-officio Clerk of the Superior Court thereof, the same being a Court of record, the officer authorized by the laws of the State of California to make the following certificate, do hereby certify that Henry P. Tricou of the City and County of San Francisco whose name is subscribed to the annexed instrument and thereon written and before whom the annexed oath or affidavit was taken, was at the time of taking such oath or affidavit, a Notary Public in and for the said City and County of San Francisco, residing in said City and County, duly authorized to take the same, and an officer duly authorized by the laws of said State to take and certify the acknowledgment and proof of deeds to be recorded in said State. And further that I am well acquainted with the handwriting of such officer, and verily believe that the signature to such jurat or certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court — the City and County of San Francisco, *the* Feb. 21, 1910, *day of.*

H. I. MULCREVY, *Clerk.* (137)

137 In the Court of Common Pleas No. 4 of Allegheny County, Pa., First Term, 1910.

No. 253.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Notice [*to Effie J. Dunlevy of Granting of Rule to Show Cause*].

To Effie J. Dunlevy:

Please take notice that a rule to show cause why Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not interplead together for the purpose of ascertaining to which of said parties $2479.70 in *ahd* hands of the New York Life Insurance Company belongs, has been granted in the above-entitled case returnable February 26, 1910.

GORDON & SMITH,
Att'ys for New York Life Insurance Co.

STATE OF ——,
County of ——, ss:

Before me, the subscriber, a Notary Public in and for the aforesaid State and County, personally appeared —— ——, who having been duly sworn according to law, deposes and says that he served a copy of the within notice, Petition and Order of Court on Mrs. Effie J. Dunlevy, on the — day of ——, 1910, by handing her a true copy thereof.

—— ——.

Sworn to and subscribed before me this — day of ——, 1910.
—— ——. (138)

138 In the Court of Common Pleas No. 4 of Allegheny County, Pa., First Term, 1910.

No. 253.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Petition [of N. Y. Life Ins. Co. for Rule on Effie J. Dunlevy et al. to Show Cause Why They Should Not Interplead Together, etc., in Boggs & Buhl vs. Dunlevy].

To the Honorable the Judges of said Court:

The Petition of the New York Life Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York and one of the Garnishees in the above-entitled execution attachment proceedings, respectfully represents:

(1) In the year 1889, to wit, on January 22d, your petitioner duly entered into a contract with Joseph W. Gould the father of Effie J. Dunlevy, the defendant above named, and one of the garnishees in the above-entitled proceeding, by the terms of which contract your petitioner undertook to and did insure the life of the said Joseph W. Gould, as evidenced by its policy No. 305,011. Said policy provided, inter alia, for the distribution of certain benefits to the insured at the termination of a Tontine Period named therein, which benefits were in the form of a cash surrender
139 value and amount to the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2479.70) Dollars.

(2) In the year 1893, to wit, on June 27th, the said Joseph W. Gould made and executed a certain written instrument purporting to be an assignment of said policy to his daughter, Effie J. Gould, the defendant above named, who was at that time thirteen years of age. The following is a true copy of said instrument, the original of which was filed with your petitioner, the New York Life Insurance Company;

For value received, I hereby assign and transfer unto Effie J. Gould, of Pittsburgh, Pa., the policy of insurance known (139) as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould, of Pittsburgh, Pa., and all dividend, benefit and advantage to be had or derived therefrom, subject to the conditions of said policy, and to the rules and regulations of the Company.

Witness my hand and seal this 27th day of June, one thousand eight hundred and ninety-three.

JOSEPH W. GOULD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment, and acknowledged that he executed the same.

HENRY C. RYAN,
Notary Public.

The New York Life Insurance Company, in accordance
140 with its rules, as stated below, has retained the duplicate of this assignment.

JOHN A. McCALL,
Per HAWES.

Notice.

NEW YORK, June 30, 1893.

The rules of the Company require that assignments of policies issued by it shall be made in duplicate; that both copies shall be sent to the home office; and that one copy shall be retained by the Company and the other returned.

The Company has no responsibility for the validity of any assignment.

The acknowledgment must be made before an officer duly authorized to administer oaths, and his authority and the genuineness of his signature must be attested by the clerk of a court of record, under his official seal. (140)

Forwarded from —— Branch Office, ——, —, 190–.

——— ———, *Cashier.*

(3) The said Effie J. Gould named in the foregoing instrument has since intermarried with R. M. Dunlevy and is the same person as Effie J. Dunlevy, the defendant above named.

(4) The Tontine Period provided for in said policy expired on January 22d, 1909, subsequent to which time your petitioner issued its check to the order of Effie J. Gould, Assignee, for the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,-
479.70) Dollars, to be delivered to her in exchange for cer-
141 tain papers including the original policy of insurance and the necessary receipts.

(5) Before said check had been delivered, however, your petitioner received a communication from Joseph W. Gould, claiming for himself the fund in your petitioner's hands, a copy of which communication is as follows:

Copy.

L. B. D. Reese, Attorney at Law, 1016 Frick Building.

Tel. 2292.

Pittsburgh, Pa., Sept. 8th, 1909.

Mr. John C. McCall, Sec'y of New York Life Insurance Company, 346-348 Broadway, New York City.

DEAR SIR: On January 24th, 1889, your company issues to me your policy No. 305,011 on my life in the sum of Five Thousand Dollars ($5,000.00). The policy is now paid, all premiums having been fully paid thereon.

On June 27th, 1893, I assigned the above policy to my daughter, Effie J. Gould, then of this City, since married to one Dunlevy, who now resides, as I am informed by a copy of a letter (141) sent to my attorney, L. B. D. Reese, in Oakland, California. Prior to the information contained in your letter to Mr. Reese under date of August 30th, I was not aware of her postoffice address.

At the time the policy was assigned, it was not my intention to pass any title thereto to my daughter, except in the event of my death before maturity. My reason for assigning it was that
142 I contemplated marrying again and I wished to make this provision for my daughter in case of my death. The policy was never delivered to my daughter, to whom it was assigned, but has always been, and now is, in my possession, and I have paid all premiums maturing thereon since the above-mentioned assignment.

I therefore write to notify your company that no money is to be paid to the said Effie J. Gould, now Effie J. Dunlevy, or her assigns, on said policy by virtue of the assignment thereof to her, and I now request and demand that the surrender value of said policy be paid to me notwithstanding said assignment.

I would thank you for an acknowledgment of this notice.

Very truly yours,

JOSEPH W. GOULD.

Attest:

L. B. D. REESE.
(S.)

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, the undersigned, a Notary Public, in and for the County of Allegheny and State of Pennsylvania, the above named Joseph W. Gould, who in due form of law acknowledged the foregoing letter to be his act and deed.

Witness my hand and Notarial Seal this 8th day of September, A. D. 1909.

[SEAL.] (142) —— ——.

(6) Your petitioner is informed that Effie J. Dunlevy, the defendant above named, is a resident of the city of Oakland, in the State of California, and that in the year 1910, to wit, on
143 January 14th, she instituted a suit in the Superior Court of the State of California, in and for the County of Marin, against your petitioner, the New York Life Insurance Company, in which suit she seeks to recover the sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars on account of policy No. 305,011, issued by your petitioner upon the life of Joseph W. Gould.

(7) Your petitioner is informed that both the original policy No. 305,011, issued by your petitioner, and the duplicate of the assignment above referred to are at the present time in the custody and possession of the said Joseph W. Gould.

(8) Your petitioner is ready and desirous of making immediate payment of the fund of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars to the party or parties lawfully entitled thereto and has no interest therein or claim thereto.

Wherefore, your petitioner prays your Honorable Court for a rule on said Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of petitioner belongs, and why your petitioner should not be permitted, when it is determined to whom the money ought to be paid, to pay the said sum of Two Thousand Four Hundred Seventy-nine and 70.100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto,
144 and for such further orders in the premises as to your Honors may seem necessary.

NEW YORK LIFE INSURANCE COMPANY,
By GORDON & SMITH, *Its Attorneys.*

STATE OF NEW YORK,
City and County of New York, ss:

On this 2d of February, 1910, before me personally appeared (143) Seymour M. Ballard, Secretary of the New York Life Insurance Company, the petitioners within named, who being by me duly sworn according to law, deposes and says that he is Secretary of the New York Life Insurance Company and familiar with its business, and that the facts stated in the foregoing pertition are true and correct.

(Signed) SEYMOUR M. BALLARD.

Subscribed and sworn to before me this 2d day of February, 1910.

[NOTARY SEAL.] RALPH FREEMAN,
Notary Public.

Order [in Boggs & Buhl vs. Dunlevy Granting Rule on Effie J. Dunlevy et al. to Show Cause Why They Should not Interplead Together, etc.].

And now, to wit, February 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in open court, upon consideration thereof, and on motion of Gordon & Smith, attorneys for petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of
145 ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs, and why said Company should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of same, by mail or registered mail, to her at her last known address.

Rule returnable the 26th day of February, 1910.

Filed March 1st, 1910.

By the Court. (144)

[*Statement of Boggs & Buhl in Boggs & Buhl vs. Gould.*]

In the Court of Common Pleas No. 4 of Allegheny Couny, Pa., First Term, 1910.

No. 253. Feigned Issue.

Boggs & Buhl, Claimant,
vs.
Jos. W. Gould, Defendant.

Execution Attachment.

Claimant's Statement.

146 Boggs & Buhl, Attachment Creditor, claimant above named, by its attorney, S. H. Huselton, respectfully represents:

That by order of Court (opinion filed) the defendant, Effie J. Dunlevy, together with all attachment creditors who may wish to intervene, were made claimants, and Joseph W. Gould the defendant; also by a further order of Court, the New York Life Insurance Company, the co-garnishee of Joseph W. Gould, the defendant, was directed to pay into court the fund in its possession, the ownership of which to be determined by this issue.

The defendant, Joseph W. Gould, is the father of Effie J. Dunlevy, the defendant in the execution attachment.

That on or about the 22d day of January, 1889, the New York Life Insurance Company issued a policy upon the life of the defendant herein, Joseph W. Gould, which said policy was numbered 305,011, and among other things provided that said policy, at the expiration of twenty years would have a cash surrender value; that all of the terms and provisions of said policy agreed to be performed by the said Joseph W. Gould having been fully performed and discharged, that under and by virtue of the terms and provisions of said policy there became due, and was due on January 22d, 1909, to Effie J. Dunlevy (née Gould) the assignee beneficiary, the sum of $2,479.70.

That by virtue of an assignment dated 27th day of June, 1893, *made and executed by* Joseph W. Gould in writing, assigned all his rights and benefits under and by terms of said policy to
147 said (145) Effie J. Dunlevy in words and figures following, to wit:

"For value received I hereby assign and transfer unto Effie J. Gould, of Pittsburgh, Pa., the policy of insurance known as No. 305,011, issued by the New York Life Insurance Company upon the Life of Joseph W. Gould, of Pittsburgh, Pa., and all dividend, benefit and advantage to be had or derived therefrom, subject to the conditions of the said policy and to the rules and regulations of the Company.

Witness my hand and seal this 27th day of June, One Thousand Eighteen Hundred and Ninety-three.

(Signed) JOSEPH W. GOULD."

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 27th day of June, 1893, before me personally came Joseph W. Gould, to me known to be the individual described in and who executed the foregoing assignment and acknowledged that he executed the same.

(Signed) HENRY C. RYAN,
Notary Public."

"The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

(Signed) JOHN A. McCALL, *Pres.*,
Per E. LAWS.

New York, June 30th, 1893."

Which said assignment was delivered to the New York Life Insurance Company on the 30th day of June, 1893; the said
148 New York Life Insurance Company made and executed a certain instrument in writing in words and figures following:

"The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.
(Signed) JOHN A. McCALL, *Pres.*,
Per E. LAWES." (146)

Wherefore, by virtue of the foregoing assignment, duly executed, made and delivered by this defendant, Joseph W. Gould, as herein set forth, all the rights and benefits of the fund as aforesaid is now the property of Effie J. Dunlevy, and by reason thereof the claimant herein, Boggs & Buhl, claims of the said estate the amount as may appear by liquidation of the judgment in its attachment execution, all of which it will expect to prove upon the trial of this cause.

S. H. HUSELTON,
Attorney for Plaintiff.

ALLEGHENY COUNTY, *ss:*

Personally appeared before me, the undersigned authority, W. C. Georgi, who being duly sworn, says that he is Credit Manager of Boggs & Buhl Company, a corporation, and its duly authorized Agent in this behalf, says that the Statements herein contained, in so far as the same are within his own knowledge, are true, and that from information he derives from others verily believes to be true.

W. C. GEORGI.

Sworn and subscribed before me this 1st day of April, 1910.
[SEAL.] L. H. McCABE,
Notary Public.

Commission expiring January 19, 1911.

149 *Order.*

Now, to wit, May 21st, on motion of S. H. Huselton, Attorney of Claimant, it is hereby ordered that the within statement be marked refiled.

BY THE COURT.

Filed Apr. 1st, 1910—refiled May 21st, 1910. (147)

Order [Framing Issue, etc., in Boggs & Buhl vs. Gould.]

In the Court of Common Pleas No. 4 of Allegheny County.

No. 253, First Term, 1910.

BOGGS & BUHL, INC., et al.,

vs.

JOS. W. GOULD.

Feigned Issue.

Copy of Order of Court Framing Issue and Directing Notice to Attaching Creditors, with Acceptance of Service and Notice.

(Copy.)

"And now, to wit, May 3d, 1910, it is ordered that the issue to be tried in this case shall be as follows, to wit: Whether Joseph W. Gould made a valid gift of policy No. 305,011, issued to him by the New York Life Insurance Company, to Effie J. Gould, now Effie J. Dunlevy."

"All attaching creditors of the said Effie J. Dunlevy who desire to intervene in this proceeding are required to do so as plaintiffs herein on fifteen (15) days' notice to the attorneys of record,
150 and to file their statements of claim or demand herein within said period of fifteen (15) days." BY THE COURT.

You are hereby notified that the Court this day made the foregoing order in the above-stated case, and you are further notified to comply therewith within the time limited therein.

L. B. D. REESE,
Pittsburgh, May 3d, 1910. *Att'y for Joseph W. Gould.*

To W. C. McClure, Esq., Attorney for Sarah B. Gould, A. J. Gould and Frank W. Taft;

To Robert P. Watt, Esq., Attorney for Pittsburgh Bank for Savings;

To Patterson, Sterrett & Acheson, Attorneys for Lincoln National Bank; (148)

To S. H. Huselton, Esq., Attorney for Boggs & Buhl;

To Levi Bird Duff, Esq., Attorney for Charles Elste.

Service of notice of the within order of Court accepted this 3d day of May, 1910.

LEVI BIRD DUFF.
CHARLES ELSTE.
PATTERSON, STERRETT & ACHESON,
Att'ys for Lincoln Nat'l Bank.
S. H. HUSELTON,
Att'y for Boggs & Buhl.
ROBERT P. WATT,
Att'y for Pittsburgh Bank for Savings.
W. C. McCLURE,
Att'y for A. J. Gould, Sarah B. Gould, and Frank W. Taft.

Filed May 3d, 1910. (149)

151 [*Statement of A. J. Gould in Boggs & Buhl vs. Gould.*]

In the Court of Common Pleas No. 4 of Allegheny County, Pa.

No. 253, First Term, 1910.

BOGGS & BUHL, INC., et al.
vs.
JOSEPH W. GOULD.

Feigned Issue.

Claimant's Statement.

A. J. Gould, attachment creditor, by his attorney, W. C. McClure, respectfully represents:

That by order of Court, at the number and term of above execution attachment, the defendant in the attachment, Effie J. Dunlevy, together with all attachment creditors who may wish to intervene were made claimants, and Joseph W. Gould the defendant; also by a further order of Court the New York Life Insurance Company Garnishee was directed to pay into court the fund in its possession, the ownership of which to be determined by this issue.

The defendant Joseph W. Gould is the father of Effie J. Dunlevy, the defendant in the execution attachment. That on or about the 22d day of January, 1889, the New York Life Insurance Company issued a policy upon the life of the defendant herein, Joseph W. Gould, which said policy was No. 305,011, and, among other things, provided, that said policy at the expiration of twenty years,
152 would have a cash surrender value. That all the terms and provisions of said policy agreed to be performed by the said Joseph W. Gould having been fully performed and discharged, under and by virtue of the terms and provisions in said policy there became due and was due on January 22d, 1909, and is still unpaid, to Effie J. Dunlevy (née Gould) the assignee beneficiary, the sum of $2,479.70. That by virtue of an assignment dated June 27th, 1893, made and executed by Joseph W. Gould in writing, the said Joseph W. Gould assigned all his rights and benefits under and by the terms of (150) said policy to said Effie J. Dunlevy in words and figures following, to wit:

"For value received I hereby assign and transfer unto Effie J. Gould of Pittsburgh, Pa., the policy of insurance known as No. 305,011 issued by the New York Life Insurance Company upon the life of Joseph W. Gould of Pittsburgh, Pa., and all dividend, benefit and advantage to be had or derived therefrom subject to the conditions of the said policy, and to the rules and regulations of the company.

Witness my hand and seal this 27th day of June, 1893.

(Signed) JOSEPH W. GOULD."

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

"On this 27th day of June, 1893, before me, personally came Joseph W. Gould, to me known to be the individual described
153 in, and who executed the foregoing assignment, and acknowledged that he executed the same.

(Signed) HENRY C. RYAN,
Notary Public."

"The New York Life Insurance Company, in accordance with its rules as stated below, has retained the duplicate of this assignment.

(Signed) JOHN A. McCALL, *President,*
Per E. LAWES."

New York, June 30th, 1893.

That said assignment was delivered to the New York Life Insurance Company on the 30th day of June, 1893, and the said New York Life Insurance Company made and executed a certain instrument in writing as follows, to wit:

"The New York Life Insurance Company in accordance with its rules as stated below, has retained the duplicate of this assignment." (151)

In the Court of Common Pleas No. 4 of Allegheny County, Pa.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Acceptance of Service of Notice, Petition, and Order of Court by L. B. D. Reese, Esq., Attorney for Joseph W. Gould, Garnishee.

To L. B. D. Reese, Esq., Attorney for Jos. W. Gould:

Please take notice that a rule to show cause why Effie J.
154 Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not interplead together for the purpose of ascertaining to which of said parties $2,479.70 in the hands of the New York Life Insurance Company belongs, has been granted in the above-entitled case, returnable February 26, 1910.

GORDON & SMITH,
Att'ys for New York Life Insurance Co.

And now February 7th, 1910, service of the above notice together with a copy of the petition and order of Court accepted.

L. B. D. REESE,
Attorney for Jos. W. Gould.

Filed March 1st, 1910. (152)

In the Court of Common Pleas No. 4 of Allegheny County, Pa.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Acceptance of Service of Notice, Petition, and Order of Court by S. H. Huselton, Esq., Attorney for Boggs & Buhl, Incorporated.

Notice.

To S. H. Huselton, Attorney for Boggs & Buhl, Incorporated:

Please take notice that a rule to show cause why Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not
155 interplead together for the purpose of ascertaining to which of said parties $2,479.70, in the hands of the New York Life Insurance Company belongs, has been granted in the above-entitled case returnable February 26, 1910.

GORDON & SMITH,
Att'ys for New York Life Insurance Co.

And now, Feb. 5th, 1910, service of the above notice together with a copy of the petition and order of court accepted.

S. H. HUSELTON,
Att'ys for Boggs & Buhl, Inc.

Filed March 1st, 1910. (153)

[*Petition of Lincoln National Bank for Leave to Intervene in Boggs & Buhl vs. Dunlevy and Order Thereon.*]

In the Court of Common Pleas No. 4 of Allegheny County, Penna.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Petition and Order.

To the Honorable the Judges of said Court:

The petition of the Lincoln National Bank, a corporation organized and existing under the laws of the United States, respectfully represents:

That on February 23, 1910, your petitioner sued out a writ of foreign attachment in assumpsit in the Court of Common Pleas

No. 3 of Allegheny County, at No. 102 May Term, 1910, in which proceeding Effie J. Dunlevy, defendant above named, was
156 named as defendant and the New York Life Insurance Company was summoned as garnishee.

That on March 4, 1910, your Honorable Court made absolute the following rule:

Order.

"And now, to wit, February 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in Open Court, upon consideration thereof and on motion of Gordon & Smith, attorneys for Petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs, and why said (154) Company should not be permited when it is determined to whom the money ought to be paid to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of the same. by mail or registered mail, to her at her last known address.

Rule returnable the 26th day of February, 1910.

BY THE COURT."

That thereafter, to wit, on March —, 1910, the said garnishee, the New York Life Insurance Company, presented its peti-
157 tion to your Honorable Court, asking leave to pay into this court the said fund of $2,479.70, to abide the issue to be framed by the Court, to which petition the Lincoln National Bank, your petitioner consented.

That thereupon, to wit, on March —, 1910, your Honorable Court made the following order:

"Order."

And now, to wit, March —, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, presented in open court, and it appearing that the consent of the Lincoln National Bank of Pittsburgh, and of Charles Elste, has been obtained, upon consideration thereof, and upon motion of Gordon & Smith, Attorneys for Petitioner, it is ordered adjudged and decreed that the New York Life Insurance Company be given leave to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2479.70) Dollars into this court, to abide the result of the issues to be framed by the Court. (155)

Wherefore, your petitioner having consented to the payment of the said fund of $2479.70, into this court, a portion of which fund is subject to the aforesaid foreign attachment, respectfully prays

your Honorable Court for leave to intervene and to be made a party to the issue to be framed as aforesaid, and for such other and further relief as the nature of the case may require.

THE LINCOLN NATIONAL BANK,
By H. A. JOHNSTON, *Cashier.*

158 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared H. A. Johnston, who being duly sworn according to law, deposes and says that he is cashier of The Lincoln National Bank, and its agent in this behalf, and that the facts set forth in the foregoing petition are true and correct.

H. A. JOHNSTON.

Sworn to and subscribed before me this 18 day of March, 1910.
HARRY M. WILLIS,
Notary Public.

My commission expires February 10, 1913.
My commission expires.

Order.

And now, to wit, March 19, 1910, the foregoing petition having been presented in open court, upon consideration thereof, on motion of Patterson, Sterret & Acheson, attorneys for petitioner, leave is hereby granted to The Lincoln National Bank to intervene in the above entitled case, the said The Lincoln National Bank to be made a party to the issue to be framed between the parties lawfully claiming the fund of $2479.70 heretofore paid into court (156) by the New York Life Insurance Company, garnishee, attorney for plaintiff being present and no objection.

BY THE COURT.

Filed March 19, 1910. (157)

159 In the Court of Common Pleas No. 4 of Allegheny County, Pennsylvania.

No. 253, First Term, 1910.

BOGGS & BUHL
vs.
EFFIE J. DUNLEVY.

Feigned Issue.

Opinion [in Boggs & Buhl vs. Dunlevy].

SWEARINGEN, *P. J.:*

This action was brought by Boggs & Buhl against Effie J. Dunlevy and a judgment was obtained. Thereupon an attachment in

execution was issued and Joseph W. Gould and the New York Life Insurance Company were named as garnishees. Both Joseph W. Gould and Effie J. Dunlevy claimed the fund, which the New York Life Insurance Company admitted was in its hands. Upon petition of the New York Life Insurance Company for leave to pay the money into Court, a Rule and an Interpleader was made absolute and it was directed to pay the money, which it had, into court. A petition was then filed on behalf of Effie J. Dunlevy, praying that a feigned issue might be framed in which said Joseph W. Gould should be named as the plaintiff and she and all other parties should be named as defendants. It was objected by said Joseph W. Gould that Effie J. Dunlevy was the real claimant and that she should be named as the plaintiff in the Feigned Issue.

It appears from the record that, on January 24, 1889
160 said Joseph W. Gould obtained a policy of insurance upon his own life from the New York Life Insurance Company, in the sum of $5,000.00 payable upon his death "to the insured's executors, administrators or assigns." The policy was upon the "Tontine Plan" (158) and matured January 22d, 1909. The proceeds of this policy are the subject of this controversy.

The policy always remained in the possession of said Joseph W. Gould and it still is in his possession. He paid all of the premiums as they fell due.

On June 27th, 1893, said Joseph W. Gould executed in duplicate an Assignment of said Policy of Insurance *of* Effie J. Gould. She subsequently marries a husband named Dunlevy, and she is the Effie J. Dunlevy who is the defendant in this proceeding. A duplicate copy of said assignment was given to the New York Life Insurance Company. The other duplicate copy was retained by Joseph W. Gould. It was never delivered to Effie J. Dunlevy (née Gould).

In consequence of the foregoing, Effie J. Dunlevy claims said fund by virtue of said Assignment of said policy of insurance. On the other hand, Joseph W. Gould avers that he revoked the gift and that he is in possession of the policy. He therefore claims the fund, which is the proceeds of said policy.

It is not pretended that Effie J. Dunlevy paid any consideration for said assignment of said Policy of Insurance. If this be true, it would seem that she could only claim the policy and the proceeds thereof as a gift. In other words, she is not a purchaser, but is a volunteer. Whether or not the gift was executed so as to
161 render it valid and irrevocable can only be determined upon the trial. She therefore is the actor upon whom rests the burden of establishing her title. Hence she and those representing her interests in the fund must be named as plaintiff in the Feigned Issue and it is so ordered.

March 19, 1910. (159)

BY THE COURT.

In the Court of Common Pleas No. 4 of Allegheny County, Penna.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Execution Attachment.

Petition [of N. Y. Life Ins. Co. for Order Permitting Payment of $2,479.70 in Boggs & Buhl vs. Dunlevy, and Order Thereon.]

To the Honorable the Judges of said Court:

The petition of the New York Life Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and one of the garnishees in the above-entitled execution attachment proceedings, respectfully represents:

That in the year 1910, to wit, on February 5th, your petitioner presented a petition to your Honorable Court, in which it disclaimed all interest in a certain fund of Two Thousand Four Hundred Seventy-nine and Seventy One-hundredths ($2,479.70) Dol-
162 lars, the proceeds of its policy #305,011, and averred its readiness to make immediate payment of said fund to the party or parties lawfully entitled thereto, and in which it prayed for a rule on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in its hands belonged.

That in the year 1910, to wit, on March 4th, your Honorable Court made absolute the following Rule:

Order.

And now, to wit, February 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in open court, upon consideration thereof and on motion of Gordon & Smith, attorneys for Petitioner, a rule is granted on Effie J. Dunlevy, (160) Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs, and why said Company should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally

with a copy of this petition and order, or by sending a copy
163 of same, by mail or registered mail, to her at her last known address.

Rule returnable the 26th day of February, 1910.

BY THE COURT.

That in the year 1910, to wit, on February 23d, the Lincoln National Bank of Pittsburgh sued out a writ of Foreign Attachment in Assumpsit in the Court of Common Pleas No. 3 of Allegheny County, at No. 102 May Term, 1910, in which proceeding Effie J. Dunlevy, the defendant above named, was named as defendant, and your petitioner, the New York Life Insurance Company, was summoned as Garnishee.

That in the year 1910, to wit, on February 23d, Charles Elste sued out a writ of Foreign Attachment in Assumpsit in the Court of Common Pleas No. 4 of Allegheny County, at No. 368, Second Term, 1910, in which proceeding Effie J. Dunlevy, the defendant above named, was named as defendant, and your petitioner the New York Life Insurance Company, was summoned as Garnishee.

That your petitioner has obtained the consent of the Lincoln National Bank of Pittsburgh, and Charles Elste, the plaintiffs respectively in the above referred to Foreign Attachment proceedings to pay said fund of Two Thousand Four Hundred Seventy-nine and (161) Seventy One-Hundredths ($2,479.70) Dollars into court. The consent of said parties is in writing and is attached thereto, and made part of this petition.

Wherefore, your petitioner prays your Honorable Court to make an order permitting it to pay the sum of Two Thousand Four
164 Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this court, to abide the result of the Issue to be framed by the Court, and for such other and further *belief* as the nature of the case may require.

NEW YORK LIFE INSURANCE COMPANY,
By GORDON & SMITH, *Its Attorneys.*

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

On this 9th day of March, A. D. 1910, before me, a notary public, personally appeared Allen T. C. Gordon, who being duly sworn according to law, deposes and says that he is one of the attorneys of the New York Life Insurance Company, the petitioner within named, and its agent in this behalf, and that the facts stated in the foregoing petition are true and correct.

ALLEN T. C. GORDON.

Subscribed and sworn to before me this 19th day of March, 1910.
[SEAL.] CLARA I. HOUSTON,
Notary Public.

My commission expires Jan. 18, 1913. (162)

Order.

And now, to wit, March 19, 1910, the foregoing petition of the New York Life Insurance Company, garnishee, presented in open Court, and it appearing that the consent of the Lincoln National Bank of Pittsburgh and of Charles Elste, has been obtained, upon consideration thereof, and upon motion of Gordon & Smith,
165 Attorneys for Petitioner, it is ordered, adjudged and decreed that the New York Life Insurance Company be given leave to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-hundredths ($2,479.70) Dollars into this court, to abide the result of the issue to be framed by this Court.

BY THE COURT. (163)

In the Court of Common Pleas No. 4 of Allegheny County, Pa.

No. 253, First Term, 1910.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Consent of the Lincoln National Bank of Pittsburgh.

And now, to wit, March 17th, 1910, comes Messrs. Patterson, Sterrett & Acheson, attorneys for and in behalf of the Lincoln National Bank of Pittsburgh, plaintiff in the suit instituted against Effie J. Dunlevy in the Court of Common Pleas No. 3 of Allegheny County at No. 102, May Term, 1910, and consent to the New York Life Insurance Company paying the sum of $2,479.70 into court to abide the result of the issue to be framed by the Court.

PATTERSON, STERRETT & ACHESON,
Attorneys for the Lincoln National Bank of Pittsburgh. (164)

166 In the Court of Common Pleas No. 4 of Allegheny County, Pa.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Consent of Charles Elste [in Boggs & Buhl vs. Dunlevy].

And now, to wit, March 17th, 1910, comes Levi Bird Duff, attorney for and in behalf of Charles Elste, plaintiff in the suit instituted against Effie J. Dunlevy in the Court of Common Pleas No. 4 of Allegheny County at No. 368, Second Term, 1910, and consents to the New York Life Insurance Company paying the sum of $2,479.70 into court, to abide the result of the issue to be framed by the Court.

LEVI BIRD DUFF,
Attorney for Charles Elste.

Filed March 19, 1910. (165)

In the Court of Common Pleas No. Four of Allegheny County.

No. 253, First Term, 1910.

BOGGS & BUHL, INC., et al.
vs.
JOSEPH W. GOULD.

Feigned Issue.

Order of Court Framing Issue and Directing Notice to Attachment Creditors [in Boggs & Buhl vs. Gould].

And now, to wit, May 3d, 1910, it is ordered that the issue
167 to be tried in this case shall be as follows, to wit:

Whether Joseph W. Gould made a valid gift of policy No. 305,011, issued to him by the New York Life Insurance Company, to Effie J. Gould, now Effie J. Dunlevy.

All attaching creditors of the said Effie J. Dunlevy who desire to intervene in this proceeding are required to do so as plaintiffs herein on fifteen (15) days' notice to the attorneys of record, and to file their statements of claim or demand within said period of fifteen (15) days.

BY THE COURT.

Filed May 3d, 1910. (166)

In the Court of Common Pleas No. 4 of Allegheny County.

No. 253, First Term, 1910.

No. 2, Second Term, 1910.

BOGGS & BUHL, INC.; A. J. GOULD, and LINCOLN NATIONAL BANK,
Intervenors,
vs.
JOSEPH W. GOULD.

Feigned Issue.

Petition and Affidavit of Joseph W. Gould for an Order Directing the Prothonotary to Pay Him the Money Paid Into Court by the New York Life Insurance Co. and Order of Court.

To the Honorable the Judges of said Court:

The petition of Joseph W. Gould, the defendant above named, respectfully represents:

That on the 8th day of July, 1907, Boggs & Buhl, Inc.,
168 obtained judgment against Effie J. Dunlevy (formerly Effie J. Gould) in the sum of $537.76, and on the 10th day of November, 1909, the said Boggs & Buhl, Inc., caused an execution

attachment to be issued on its said judgment and named the New York Life Insurance Company and Joseph W. Gould as garnishees therein.

That subsequently, to wit, on February 5th, 1910, the said New York Life Insurance Company presented its petition to your Honorable Court setting forth, inter alia, "That in the year 1889, to wit, on January 2d, said petitioner duly entered into a contract with Joseph W. Gould, one of the garnishees in the above entitled proceeding, by the terms of which contract petitioner insured the life of said Joseph W. Gould, as evidenced by policy number 305,011, which said policy provided, inter alia, for the distribution of certain benefits to the insured at the termination of the Tontine Period named therein, which benefits were in the form of a cash surrender value and amounted to the sum of $2,479.70." (167)

"That in the year 1893, to wit, June 27th, said Joseph W. Gould made and executed a certain instrument in writing purporting to be an assignment of said policy to his daughter, Effie J. Gould, now Effie J. Dunlevy. That on or about September 8th, 1909, the said Joseph W. Gould revoked said assignment and demanded of said Insurance Company that said cash surrender value of said policy, to wit, the sum of $2,479.70, be paid to him and not to the said Effie J. Dunlevy, née Gould, and the said New York Life Insur-
169 ance Company, in its said petition, asked leave to pay said sum of money into Court for the benefit of such person or persons as would appear to be entitled thereto."

On March 19th, 1910, your Honorable Court ordered, adjudged and decreed that the said New York Life Insurance Company be given leave to pay said sum of $2,479.70 into court to abide the result of the issue to be framed by the Court, and on March 21st, 1910, said sum was paid to the Prothonotary and receipted for by him, and after deducting his poundage therefrom, there remains the sum of $2,471 of said funds in the hands of Wm. B. Kirker, Prothonotary of said Court. On March 19th, 1910, your Honorable Court ordered that an issue be framed wherein the said Effie J. Dunlevy, née Gould, or those representing her interest, being her creditors, in said fund, be named as plaintiff in said feigned issue and Joseph W. Gould named as defendant therein.

On May 3d, 1910, your Honorable Court ordered that the issue to be tried in said case be as follows: "Whether Joseph W. Gould made a valid gift of policy No. 305,011 issued to him by the New York Life Insurance Company — Effie J. Gould, now Effie J. Dunlevy," and further ordered that all attaching creditors of said Effie J. Dunlevy who desired to intervene in said proceeding were required to do so as plaintiffs therein on fifteen days' notice to the attorneys of record, and to file their statement of claim or demand therein within the said period of fifteen days. (168)

170 That said notice was duly served on the attorneys for all of the attaching creditors of said Effie J. Dunlevy on May 3d, 1910, and the said Boggs & Buhl, Inc., A. J. Gould and the Lincoln National Bank of Pittsburgh intervened in said feigned issue and filed their statement of claim, to which the said Joseph W. Gould

filed answer and also a plea therein, and said feigned issue was placed on the issue docket for trial.

That on the 11th day of June, 1910, on petition of said Joseph W. Gould, by his attorney, L. B. D. Reese, and after due notice to all parties in interest, the Court ordered that said feigned issue be placed at the head of Trial List No. 7 of said Court for trial.

That on Friday, September 16th, 1910, said case was called for trial and placed on the weekly trial list to be taken up on Monday, the 19th day of September, 1910. That said case was called for trial on said 19th day of September, 1910, and on the same day a verdict was rendered for the defendant; and on September 24th, 1910, no motion having been made for a new trial, judgment was entered on said verdict.

That on the 26th day of September, 1910, notice was served on the attorneys of all of the above-named intervenors notifying them that an application will be made on Saturday morning, October 1st, 1910, at 9:30 o'clock, or as soon thereafter as the Court will hear the same, for an order directing Wm. B. Kirker, Esq., Prothonotary, to pay the money now in his hands, received from the New York Life Insurance Company as aforesaid, to Joseph W. Gould or his at-
171 torney, unless an appeal was taken therein in the meantime; which said notice is hereto attached and made part hereof; and that no appeal has been taken in said proceedings.

Your petitioner therefore prays your Honorable Court for an order directing Wm. B. Kirker, Esq., Prothonotary, to pay the money now in his hands, received from the New York Life Insurance Company in said proceedings, to wit, the sum of $2,471, to Joseph W. (169) Gould, the defendant, or to his attorney, L. B. D. Reese, forthwith. And he will ever pray, etc.

JOSEPH W. GOULD.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Joseph W. Gould, being duly sworn according to law, deposes and says that the facts stated in the foregoing petition are true as he verily believes.

JOSEPH W. GOULD.

Sworn to and subscribed before me this 1st day of October, 1910.
WM. B. KIRKER, *Pro.*

Order.

And now to wit, October 1st, 1910, the within petition presented in open court, and upon consideration thereof the prayer of said petition is granted. And it is ordered, adjudged and decreed that Wm. B. Kirker, Esq., Prothonotary, pay to Joseph W. Gould, or to his attorney of record, L. B. D. Reese, forthwith the sum of
172 Twenty-four Hundred and Seventy-one ($2,471) Dollars, that being the amount received by said Prothonotary from the New York Life Insurance Company March 21st, 1910, less his

poundage, viz., Eight Dollars and Seventy Cents ($8.70) by virtue of an order of this Court dated March 19th, 1910. Said money having been paid to said Prothonotary by said Insurance Company and received by him in proceedings at No. 253 First Term, 1910, o fthis Court.

BY THE COURT. (170)

In the Court of Common Pleas No. 4 of Allegheny County.

No. 253, First Term, 1910.

Feigned Issue No. 2, Second Term, 1910.

BOGGS & BUHL, INC., and A. J. GOULD and LINCOLN NATIONAL BANK, Intervenors,
vs.
JOSEPH W. GOULD.

Please take notice that an application will be made on Saturday morning, October 1st, 1910, at 9:30 o'clock, or as soon thereafter as the Court will hear the same, for an order directing Wm. B. Kirker, Esq., Prothonotary, to pay the money now in his hands received by him from the New York Life Insurance Company, per Order of Court in above-stated proceedings, to Joseph W. Gould, the defendant, or to his attorney, unless an appeal is taken therein in
173 the meantime.

L. B. D. REESE,
Attorney for Joseph W. Gould.

Pittsburgh, Sept. 26th, 1910.

To S. H. Huselton, Esq., Attorney for Boggs & Buhl, Inc.
W. C. McClure, Esq., Attorney for A. J. Gould.
Patterson, Sterrett & Acheson, Attorneys for Lincoln National Bank, Intervenors.

Service of above notice accepted this 26th Sept., 1910.
S. H. HUSELTON,
For Boggs & Buhl.
W. C. McCLURE,
Att'y for A. J. Gould.

Service of within notice accepted this 26th day of September, 1910.
PATTERSON, STERRETT & ACHESON,
Att'ys for Lincoln National Bank.

Filed Oct. 1, 1910. (171)

[*Feigned Issue Docket Entries in Boggs & Buhl vs. Gould.*]

In the Court of Common Pleas No. Four of Allegheny County, Penna.

Feigned Issue No. 2, Second Term, 1910.

No. 253, First Term, 1910.

BOGGS & BUHL, INC.; A. J. GOULD and LINCOLN NATIONAL BANK, Intervenors,
vs.
JOSEPH W. GOULD.

Feigned Issue Docket Entries.

174 April 1, 1910, affi't and statement filed. And now, May 3, 1910, it is ordered that the issue to be tried in this case shall be as follows: Whether Joseph W. Gould made a valid gift of policy No. 305,011 issued to him by the New York Life Insurance Co. to Effie J. Gould, now Effie J. Dunlevy, all attaching creditors of said Effie J. Dunlevy, who desire to intervene in this proceeding, are required to do so as plaintiffs herein, on fifteen (15) days' notice to the attorneys of record, and to file their statements of claim or demand within said period of fifteen (15) days. May 3, 1910, notice of above order served on Levi Bird Duff, att'y for Charles Elste, Patterson, Sterrett & Acheson, att'ys for Lincoln National Bank, S. H. Huselton, att'y for Boggs & Buhl, Robert T. Watt, att'y for Pgh. Bank for Savings, W. C. McClure, att'y for A. J. Gould, Sarah B. Gould and Frank W. Taft. May 18, 1910, aff't and statement of A. J. Gould filed. May 19, 1910, aff't and statement of Lincoln National Bank of Pittsburgh filed. And now, May 21, 1910, it is ordered that within statement be marked refiled. June 6, 1910, answer of Joseph W. Gould filed. June 7, 1910, plea filed. June 11, 1910, præcipe for issue filed. And now, June 11, 1910, it is ordered that above case be placed at the head of trial list No. 7 for trial. Sept. 19, 1910, on trial list and jury sworn. Eo Die verdict for the defendant. Sept. 24, 1910, sheriff's receipt paid by def't's att'y for verdict fee filed and adjudgment on the verdict. (172)

(Signed) JOHN A. McCALL, *President.*
Per E. LAWES."

175 That at the time the said assignment was made by the said Joseph W. Gould, the said Effie J. Dunlevy was of the age of — years, and resided with her father, the said Joseph W. Gould, at that time, and for a long time subsequent thereto, to wit, up to the time of her marriage with Richard M. Dunlevy.

That subsequent to the assignment aforesaid the said Joseph W. Gould ratified the said assignment, and informed his daughter and others of said assignment, and stated that the proceeds of said policy were to go to his daughter, Effie J. Dunlevy.

Wherefore by virtue of the foregoing assignment, duly made, executed and delivered by the defendant Joseph W. Gould, as herein set forth, all rights and benefits of the fund as aforesaid are now the property of Effie J. Dunlevy, and by reason thereof the claimant herein, A. J. Gould, claims of the said estate the amount as may appear by liquidation of the judgment in his attachment execution, all of which he expects to prove upon the trial of this cause.

W. C. McCLURE,
Attorney for A. J. Gould, Claimant.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Personally appeared before me, the undersigned authority, A. J. Gould, who being duly sworn according to law deposes and says, that the statements herein contained in so far as the same are within his knowledge, are true, and that so far as they are derived from information from others, he believes them to be true.

A. J. GOULD. (173)

176 Sworn to and subscribed before me this 16th day of May, 1910.

[SEAL.] W. C. McCLURE.
Notary Public.

My commission expires January 18, 1913.

Filed May 18, 1910. (174)

In the Court of Common Pleas No. 4 of Allegheny County, Penna., First Term, 1910.

No. 253.

BOGGS & BUHL, INCORPORATED,
vs.
EFFIE J. DUNLEVY.

Statement of Claim of the Lincoln National Bank of Pittsburgh.

The Lincoln National Bank of Pittsburgh, an attaching creditor of Effie J. Dunlevy, having, by order of Court entered March —, 1910, been granted leave to intervene in the above-entitled case as party plaintiff, makes the following statement of claim:

That at No. 102 May Term, 1910, of the Court of Common Pleas No. 3 of Allegheny County, the Lincoln National Bank of Pittsburgh, this claimant brought a suit in foreign attachment against the said Effie J. Dunlevy, a nonresident of Pennsylvania, formerly Effie J. Gould, and now intermarried with R. M. Dunlevy, which said record is hereby referred to and made part hereof and attached hereto, and made part hereof marked Exhibit "A," is a copy of the statement of claim filed at said number and term; that the Court

has ordered that said Effie J. Dunlevy, together with all at-
177 taching creditors who may wish to intervene, shall be plaintiffs and Joseph W. Gould shall be defendant, to determine the issue as to whether Joseph W. Gould made a valid gift of policy No. 305,011, issued by the New York Life Insurance Company to Effie J. Gould, now Effie J. Dunlevy; that the said Joseph W. Gould is the father of said Effie J. Gould, now Effie J. Dunlevy; that on or about January 22, 1889, the New York Life Insurance Company issued a policy of life insurance on the life of the said Joseph W. Gould, said policy being No. 305,011 and said policy was to mature at the end of twenty years from its date, that is to say, at the expiration of (175) twenty years from January 22, 1889, there would become due and payable on said policy the sum of $2,479.70.

That on or about June 27, 1893, the said Joseph W. Gould made an assignment in writing of said policy, by virtue of which he assigned all of his right and all the benefits under said policy to his said daughter, Effie J. Gould, now Effie J. Dunlevy, said assignment was as follows, namely:

"For value received, I hereby assign and transfer unto Effie J. Gould of Pittsburgh, Pa., the policy of insurance, known as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould of Pittsburgh, Pa., and all dividends and benefit and advantage to be had or derived therefrom, subject to the conditions of the said policy and under the rules and regulations of the company.

Witness my hand and seal this 27th day of June, one
178 thousand eight hundred and ninety-three.

(Signed) JOSEPH W. GOULD."

—and said assignment was duly acknowledged by Joseph W. Gould before Henry C. Ryan, a notary public, who attached his certificate of acknowledgment thereto, and said assignment was, on or about June 30, 1893, delivered to the New York Life Insurance Company, and the said company issued a certain writing as follows:

"The New York Life Insurance Company in accordance with its rules as stated above has retained a duplicate of this assignment.

(Signed) JOHN A. McCALL, *President*,
Per E. LAWES."

That the said Effie J. Gould, to whom said assignment was made, was subsequently intermarried with R. M. Dunlevy, and is the defendant in the foreign attachment proceeding, above referred to; that the said Effie J. Gould, now Effie J. Dunlevy, by virtue (176) of said assignment, became the beneficiary under said policy and was such beneficiary on January 22, 1899, on which date there became due, under the terms and conditions of said policy, to her the sum of $2,479.70, which sum the New York Life Insurance Company has paid into court.

That the said Effie J. Dunlevy is entitled to receive said proceeds of said policy of insurance, subject to the rights of the attaching creditors, and this claimant, as an attaching creditor of said Effie

J. Dunlevy, claims so much of said sum so paid into court as
179 aforesaid as may be sufficient to satisfy its claim with costs.

THE LINCOLN NATIONAL BANK
OF PITTSBURGH,
By H. A. JOHNSTON, *Cashier.*

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared H. A. Johnston, cashier of the Lincoln National Bank of Pittsburgh, who being duly sworn according to law deposes and says that the averments contained in the foregoing statement of claim are true and correct, as he is informed and believes and expects to be able to prove upon the trial of this case.

H. A. JOHNSTON.

Sworn to and subscribed before me this 18th day of May, 1910.
[SEAL.] M. D. ULLERY,
Notary Public.

My commission expires:
My commission expires January 19th, 1911. (177)

180 EXHIBIT "A."

In the Court of Common Pleas No. 3 of Allegheny County, Penna., May Term, 1910.

No. 102.

THE LINCOLN NATIONAL BANK OF PITTSBURGH, a Corporation,
vs.
EFFIE J. DUNLEVY, a Nonresident of Pennsylvania, Formerly Effie J. Gould, and Now Intermarried with R. M. Dunlevy.

Statement of Claim.

The Lincoln National Bank of Pittsburgh, the above-named plaintiff, brings this suit against Effie J. Dunlevy, formerly Effie J. Gould, and now intermarried with R. M. Dunlevy, the above-named defendant, a nonresident of the State of Pennsylvania, upon a cause of action whereof the following is a statement:

The plaintiff, since a date prior to August 16, 1907, has been and still is a national banking association, under the laws of the State of Pennsylvania, having its principal place of business in the City of Pittsburgh, Pennsylvania.

On August 16, 1907, the said Effie J. Dunlevy, defendant above named, made and executed a certain check in writing, a true copy of which is as follows:

181 PITTSBURGH, PA., Aug. 16, 1907.

The Marine National Bank,
Smithfield Street & Third Avenue.

Pay to the order of R. M. Dunlevy $175.00 One Hundred and Seventy-five no/100 Dollars.
Endorsed: Effie J. Dunlevy, R. M. Dunlevy."

The said check, made to the order of R. M. Dunlevy as (178) aforesaid in the sum of $175 was then and there endorsed by R. M. Dunlevy and delivered to the plaintiff, and the plaintiff cashed the same, paying to the said R. M. Dunlevy the sum of $175 called for by the check. The said check was duly presented for payment at the Marine National Bank, upon which it was drawn but payment thereof was refused for the reason that there was not sufficient funds in said bank to the credit of the maker with which to pay said check. The payment of said check has been repeatedly demanded from the said defendant, but she has neglected and refused to pay the same, and no interest has ever been paid on the same, and the plaintiff therefore claims of the defendant the sum of $175 with interest thereon from August 16, 1907. There are no credits, setoffs or counterclaims of any kind, and said sum of $175 with interest aforesaid is wholly and justly due, owing and unpaid.

Wherefore plaintiff brings this suit.

THE LINCOLN NATIONAL BANK OF PITTSBURGH,
By H. A. JOHNSTON.

182 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

Before me, the undersigned authority, personally appeared H. A. Johnston, who being duly sworn according to law deposes and says that he is cashier of The Lincoln National Bank of Pittsburgh, plaintiff above named, and makes his affidavit in its behalf, and that the averments set forth in the foregoing statement are true and correct, as he verily believes and expects to be able to prove upon the trial of this case.

H. A. JOHNSTON.

Sworn to and subscribed before me this — day of February, 1910.

——— ———,
Notary Public.

My com. expires —.

Filed May 19, 1910. (179)

In the Court of Common Pleas No. Four of Allegheny County, First Term, 1910.

No. 253.

No. 2, Feigned Issue.

BOGGS & BUHL, INC., et al.
vs.
JOSEPH W. GOULD.

Answer of Joseph W. Gould [to Statements of Claim in Boggs & Buhl vs. Gould].

Joseph W. Gould, the defendant above named, by L. B.
183 D. Reese, his attorney, comes and makes answer to the several statements of claim filed in the above stated case and says that the said several plaintiffs in said action named ought not to have and maintain their said action against the defendant for the following reasons, viz:

1. The defendant, Joseph W. Gould, did not make a valid gift of policy No. 305,011, issued to him by the New York Life Insurance Company to Effie J. Gould, now Effie J. Dunlevy.

2. The defendant, Joseph W. Gould, never delivered said policy of insurance nor the assignment thereof to Effie J. Gould now Effie J. Dunlevy, but retained both said policy and the assignment thereof from the time said policy was issued and said assignment was made, up to the present time, and paid all premiums on said policy maturing after the date of said assignment.

3. The defendant, Joseph W. Gould, never delivered said policy nor the assignment thereof, but retained possession thereof for the purpose of revoking the same should he be living at the time all premiums on said policy were paid so that he might receive the cash surrender value thereof; and the said defendant did revoke said assignment after all premiums on said policy had been paid and notified the said Insurance Company to pay the cash surrender value thereof to him and not to the said Effie J. Gould now Effie J. Dunlevy. (180)

At the time of making an assignment of said policy to the said Effie J. Gould, it was his intention that she should have the bene-
fit thereof in case of his death before the arrival of the
184 Tontine Period thereof; it being his further intention that, if living at the time when all premiums were paid on said policy, to receive the cash surrender value thereof himself. And that he never intended that the said Effie J. Gould, now Effie J. Dunlevy, should receive any moneys on said policy except in the event of his death before all of the premiums on said policy had been paid.

4. The defendant, Joseph W. Gould, never ratified the assignment of said policy by word or deed, and denies the allegation con-

tained in the statement of claim filed in the above case by A. J. Gould "that subsequent to the assignment aforesaid, the said Joseph W. Gould ratified the said assignment and informed his daughter and others of said assignment and stated that the proceeds of said policy were to go to his daughter, Effie J. Dunlevy."

5. The said assignment of said policy as set forth in the several statements filed by the several plaintiffs in the above action was a voluntary act of the defendant, Joseph W. Gould, without consideration, and was subject to his power of revocation, and said defendant did revoke said assignment after all the premiums thereon were paid and before any payments under said assignment had been made to the said Effie J. Dunlevy.

6. The assignment set forth in plaintiffs' several statements of claim is invalid for want of delivery.

7. The defendant, Joseph W. Gould, is advised that the indebtedness of the said Effie J. Gould, now Effie J. Dunlevy, to the said A. J. Gould is less than three hundred dollars ($300) and
185 the judgment confessed by the said Effie J. Dunlevy to the said A. J. Gould, upon which his right to interplead in this case is (181) founded, is fraudulent and void in any amount in excess of about Two hundred Dollars ($200).

The said Effie J. Gould, now Dunlevy, had no knowledge of the absolute assignment of said policy to her until notified by the New York Life Insurance Company after the payment of the last premium due thereon by the defendant, Joseph W. Gould, which said notice was given her before defendant revoked said assignment.

JOSEPH W. GOULD,
By L. B. D. REESE,
His Attorney.

June 6th, 1910 (filed). (182)

In the Court of Common Pleas No. 4 of Allegheny County, First Term, 1910.

No. 253.

No. 2, Feigned Issue.

BOGGS & BUHL, INC., et al.
vs.
JOSEPH GOULD.

Plea [of Joseph W. Gould in Boggs & Buhl vs. Gould].

And now, June 7th, 1910, comes Joseph W. Gould, the defendant above named, by L. B. D. Reese, his attorney, and for a plea in the issue in this behalf says, that the right and title to the fund paid into court by the New York Life Insurance Company
186 on policy No. 305,011 is not in Effie J. Gould, now Effie J. Dunlevy, or in the plaintiffs as set out in their statements of claim or declarations, but that said fund belongs to, and is the property of, this defendant.

And for a further plea defendant says that no valid gift of said policy No. 305,011, issued to him by the said New York Life Insurance Company was ever made to said Effie J. Gould, now Effie J. Dunlevy, in that said policy nor the assignment thereof was ever delivered to her.

And for a further plea in this behalf, defendant pleads the matters set forth in his answer to the plaintiffs' statements of claim or declarations.

JOSEPH W. GOULD,
By L. B. D. REESE,
His Att'y.

Filed June 7th, 1910. (183)

In the Court of Common Pleas No. 4 of Allegheny County, First Term, 1910.

No. 253.

No. 2, Feigned Issue.

BOGGS & BUHL, INCORPORATED, et al.
vs.
JOSEPH GOULD.

Notice of Application to Have Case Placed at Head of Trial List No. 7th for Trial [in Boggs & Buhl vs. Gould.]

Please take notice that an application will be made in above stated case on Saturday morning, June 11th, 1910, at 9:30 o'clock or as soon thereafter as the Court will hear the same, for an order
187 directing that said case shall be placed at the head of Trial List No. 7 of said Court for trial.

L. B. D. REESE,
Attorney for Defendant.

Pittsburgh, June 7th, 1910.

Service of the within notice accepted this 7th day of June, 1910.
W. D. McCLURE,
Att'y for A. J. Gould.
S. H. HUSELTON,
Att'y for Boggs & Buhl.

PATTERSON, STERRETT & ACHESON,
Att'ys for Lincoln Nat. Bank. (184)

Wm. B. Kirker, Esq., Pro.:
Please put above case on Issue Docket.

L. B. D. REESE,
Att'y for De'ft.

Filed June 11th, 1910. (185)

In the Court of Common Pleas No. 4 of Allegheny County.

No. 253, First Term, 1910.

No. 2, Feigned Issue.

BOGGS & BUHL, INC., et al.
vs.
JOSEPH GOULD.

Petition to Have Issue Placed at Head of Trial List No. 7 [in Boggs & Buhl vs. Gould].

To the Honorable the Judges of said Court:

The petition of Joseph W. Gould, the defendant above
188 named, by L. B. D. Reese, his attorney, respectfully represents:

That some time prior to November 10th, 1909, Boggs & Buhl, Inc., obtained judgment against Effie J. Dunlevy (formerly Effie J. Gould), and on the said 10th day of November, 1909, the said Boggs & Buhl, Inc., caused an execution attachment to be issued on its said judgment and named the New York Life Insurance Company and Joseph W. Gould as garnishees therein.

That subsequently, to wit, on February 5th, 1910, the said New York Life Insurance Company presented its petition to your Honorable Court, setting forth, inter alia, "That in the year, 1889, to wit, on January 22d, said petitioner duly entered into a contract with Joseph W. Gould, one of the garnishees in the above-entitled proceeding, by the terms of which contract petitioner insured the life of the said Joseph W. Gould, as evidenced by policy No. 305,011, which said policy provided, inter alia, for the distribution of certain benefits to the insured at the termination of the Tontine Period named therein, which benefits were in the form of a cash surrender value and amounted to the sum of $2,479.70."

"That in the year 1893, to wit, June 27th, the said Joseph W. Gould made and executed a certain instrument in writing purporting to be an assignment of said policy to his daughter, Effie (186) J. Gould, now Effie J. Dunlevy."

That on or about September 8th, 1909, the said Joseph W.
189 Gould revoked said assignment and demanded of said Insurance Company that said cash surrender value of said policy, to wit, the sum of $2,479.70, be paid to him and not to the said Effie J. Dunlevy (nee Gould), and said New York Life Insurance Company, in its said petition, asked leave to pay said sum of money into court for the benefit of such person or persons as would appear to be entitled thereto.

On March 19th, 1910, your Honorable Court ordered, adjudged and decreed that the said New York Life Insurance Company be given leave to pay said sum of $2,479.70 into court to abide the result of the issue to be framed by the Court, and on March 21st,

1910, said sum was paid to the Prothonotary and receipted for by him, and after deducting his poundage therefrom, there remains the sum of $2,471 of said fund in court.

On March 19th, 1910, your Honorable Court directed that an issue be framed wherein the said Effie J. Dunlevy (nee Gould), and those representing her interest, being her creditors, in said fund be named as plaintiff in said Feigned Issue and Joseph W. Gould named as the defendant therein

On May 3d, 1910, your Honorable Court ordered that the issue to be tried in said case be as follows: "Whether Joseph W. Gould made a valid gift of policy No. 305,011, issued to him by the New York Life Insurance Company, to Effie J. Gould, now Effie J. Dunlevy," and further ordered that all attaching creditors of said Effie J. Dunlevy who desired to intervene in said proceeding were required to do so as plaintiffs therein on fifteen days' notice to
190 the attorneys of record, and to file their statements of claim or demand therein within said period of fifteen days.

That said notice was duly served on the attorneys for all judgment creditors of the said Effie J. Dunlevy on May 3d, 1910, (187) and all who desired, have intervened in said Feigned Issue and an answer to said statements or declarations has been filed by the said Joseph W. Gould, and he has also filed a plea therein, and said Feigned Issue can now be placed on the Issue Docket for Trial.

That under the rules of Court the said Feigned Issue must be placed on the Issue Docket as other causes; and if the said cause is so placed on the Issue Docket, it will be at least two years before a trial thereof can be reached, and the fund hereinbefore recited in the hands of the Court will remain undisturbed for at least that length of time, which will be a hardship on whoever may be entitled to receive the same.

Your petitioner avers that he is entitled to said fund and therefore prays your Honorable Court that said Feigned Issue be placed at the head of Trial List No. 7 of your Honorable Court for trial, so that he may receive said fund or it may be determined as nearly as possible to whom the same is to be paid.

And he will ever pray, etc.

JOSEPH W. GOULD,
By L. B. D. REESE, *His Att'y.*

191 STATE OF PENNSYLVANIA,
County of Allegheny, ss:

L. B. D. Reese, being duly sworn according to law, deposes and says that the facts stated in the foregoing petition are true as he verily believes, and that he makes this petition on behalf of Joseph W. Gould, who is now in the State of Idaho.

L. B. D. REESE.

Sworn to and subscribed before me this 10th day of June, 1910.
[SEAL.]
ALICE E. DUFF,
Notary Public.

My commission expires January 21, 1911. (188)

And now, to wit, June 11th, 1910, the within petition presented in open court, and it appearing to the Court that all parties in interest have received notice of this application, it is now ordered that William B. Kirker, the Prothonotary of this Court, place the above-stated Feigned Issue at the head of Trial List No. 7 of this Court for trial.

BY THE COURT.

Filed June 11th, 1910. (189)

In the Court of Common Pleas No. 4 of the County of Allegheny, Pa.

No. 253—First Term, 1910.

Feigned Issue No. 2, Second Term, 1910.

BOGGS & BUHL, INC., A. J. GOULD and LINCOLN NATIONAL BANK, Intervenors,
vs.
JOSEPH W. GOULD.

192 *Verdict.*

And now, to wit, Sept. 19th, 1910, we the Jurors empanelled in the above-entitled case find verdict for defendant.

[Endorsed:] No. 253—First Term 1910. Feigned Issue No. 2, 2d T., 1910. Boggs & Buhl, Inc., A. J. Gould and Lincoln National Bank, Intervenors, versus Joseph W. Gould. Jury Sworn. Verdict. Filed Sept. 19th, 1910. Wm. B. Kirker, Prothonotary. (190)

PITTSBURGH, Sept. 24, 1910.

Received from L. B. D. Reese Four Dollars, Verdict Fee, in the case of Boggs & Buhl, Inc., *at* al. vs. Jos. W. Gould, being No. 253 of First Term, A. D. 1910.

JUDD H. BRUFF, *Sheriff.*

[Endorsed on face:] Alegheny County. [Endorsed on back thereof:] No. 253—1st Term, 1910. F. I. 2. Boggs & Buhl, Lincoln Nat. Bank vs. Jos. W. Gould. Filed Sept. 24, 1910. (191)

[*Certificate to Record in Boggs & Buhl vs. Dunlevy.*]

COMMONWEALTH OF PENNSYLVANIA,
Allegheny County, ss:

I, Wm. B. Kirker, Prothonotary of the Court of Common Pleas No. Four in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case therein
193 stated, wherein Boggs & Buhl, — Plaintiff, and Effie J. Dunlevy, — Defendant, as the same remains of record before the said Court at No. 777 of Third Term, A. D. 1907,

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of the said Court, the 19th day of December, A. D. 1910.

[COURT SEAL.] WM. B. KIRKER,
Prothonotary.

ALLEGHENY COUNTY, *ss:*

I, Joseph M. Swearingen, President Judge of the Court of Common Pleas No. Four in and for said County, certify that Wm. B. Kirker, by whom the above attestation was made, was, at the date thereof, Prothonotary of said Court, duly qualified; and the said attestation is in due form of law, and made by the proper officer.

Witness my hand and seal the 19th day of December, A. D. 1910.

JOSEPH M. SWEARINGEN, *P. J.* [SEAL.] (192)

ALLEGHENY COUNTY, *ss:*

I. Wm. B. Kirker, Prothonotary of the Court of Common Pleas No. Four for said County, certify that Hon. Jos. M. Swearingen, Esq., by whom the above certificate was given, and whose name is there*by* subscribed in his own proper handwriting, was at the date thereof President Judge of the said Court, duly commissioned and sworn and acting.

In Witness Whereof, I have hereunto set my hand and
194 affixed the seal of said court, the 19th day of December, 1910.

[COURT SEAL.] WM. B. KIRKER,
Prothonotary.

[Endorsed on back thereof:] Boggs & Buhl vs. Effie J. Dunlevy. Exemplification of Record. At No. 777—Third Term, 1907, from the Court of Common Pleas No. Four, in and for the County of Allegheny, Pennsylvania.

Debt	$537.76
Int. from July 8th, 1807	
Allegheny Co. Costs	10.25
This Record	35.00

WILLIS F. McCOOK,
S. H. HUSELTON,
Att'y for Pl'ff. (193)

[Endorsed:] Filed Dec. 7, 1911. Southard Hoffman, Clerk. By W. B. Maling, Deputy Clerk. (194)

In the United States District Court, Northern District of California, Second Division.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

195 *Stipulation Waiving Trial by Jury.*

A trial by jury is hereby expressly waived in the above-entitled action.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Attorneys for Plaintiff.
PAGE, McCUTCHEN, KNIGHT & OLNEY,
Attorneys for Defendants.

[Endorsed:] Filed May 16, 1912. Jas. P. Brown, Clerk, by J. A. Schaertzer, Deputy Clerk. (195)

At a Stated Term, to wit, the March A. D. 1913, of the District Court of the United States of America in and for the Northern District of California, Second Division, Held at the Court-room, in the City and County of San Francisco, on Monday, the 10th Day of March, in the Year of Our Lord One Thousand Nine Hundred and 13.

Present: The Honorable William C. Van Fleet, District Judge.

No. 15041.

EFFIE J. GOULD DUNLEVY
vs.
NEW YORK LIFE INS. CO. et al.

Order for Judgment.

This cause heretofore tried and submitted being now fully considered and the Court having rendered its opinion in writing,
196 it was ordered, in accordance therewith, that Effie J. Gould Dunlevy, plaintiff, do have and recover of and from New York Life Insurance Company, a corporation, defendant the sum of $3,195.70 and costs, and that the defendant, Joseph W. Gould, be and he hereby is debarred from participating in said sum of money or any part thereof. (196)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Judgment.

This cause having come on regularly for trial upon the 29th day of May, 1912, before the Court sitting without a jury, a trial by jury having been specially waived by written stipulation of the attorneys for the respective parties; Frank W. Taft, Esq., appearing as the attorney for the plaintiff and F. W. Boland, Esq., appearing on behalf of Messrs. Page, McCutchen, Knight & Olney, attorneys for the defendants; and evidence on behalf of the respective parties having been introduced and closed, and the cause having been
197 submitted to the Court for consideration and decision, and briefs having been filed, and the Court, after due deliberation, having ordered that judgment be entered herein in favor of plaintiff and against defendants and for costs:

Now, therefore, by virtue of the law and by reason of the premises, it is considered by the Court that Effie J. Gould Dunlevy plaintiff, do have and recover of and from New York Life Insurance Company, a Corporation, defendant, the sum of Three Thousand One Hundred Ninety-five and 70/100 ($3,195.70) Dollars, together with her costs herein expended taxed at $26.90, and it was further ordered that the defendant Joseph W. Gould be and he hereby is barred from participating in said sum of money or any part thereof
(197)

Judgment entered March 10, 1913.

W. B. MALING, *Clerk,*
By J. A. SCHAERTZER,
Deputy Clerk.

A True Copy, Attest:
[SEAL.]

W. B. MALING, *Clerk,*
By J. A. SCHAERTZER,
Deputy Clerk.

[Endorsed:] Filed March 10, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (198)

198 In the District Court of the United States for the Northern District of California.

No. 15041.

EFFIE J. GOULD DUNLEVY
vs.
NEW YORK LIFE INSURANCE CO.

Certificate to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court, this 10th day of March, 1913.

[SEAL.]

W. B. MALING, *Clerk,*
By J. A. SCHAERTZER,
Deputy Clerk.

[Endorsed:] Filed March 10, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (199)

199 In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Opinion.

Frank W. Taft, Clarence Coonan, and Nat Schmulowitz, for Plaintiff.

Page, McCutchen, Knight & Olney, for Defendant New York Life Insurance Company.

VAN FLEET, *District Judge:*

Plaintiff brings this action to recover $2,479.70, the cash surrender value accrued under the tontine provisions of a policy of life insurance issued by the defendant insurance company on the life of its co-defendant, Joseph W. Gould, the father of plaintiff, the policy being alleged to have been assigned by Gould to plaintiff.

The defenses of the insurance company are, (1) that there was no valid or perfected assignment of the policy to the plaintiff; and (2) that plaintiff is concluded by a judgment recovered against the

company by its codefendant Gould on the same demand in the Court of Common Pleas of the State of Pennsylvania, under which
200 judgment the amount involved has been fully paid to the latter. The answer of the defendant Gould, while silent as to the judgment, sets up that the assignment counted on never became perfected for reasons that will be (200) hereafter noticed.

1. As to the validity of the alleged assignment: The policy was issued to Gould, then a resident of Pittsburgh, Pennsylvania, in 1889. In 1893, while his daughter, the plaintiff, was a child of thirteen years living with him and under his protection and maintenance, he went to the office of the local agent of the company and executed an assignment of the policy to her, absolute and unconditional in form, purporting to transfer to her "all dividend, benefit, and advantage to be had or derived therefrom." The assignment was executed in duplicate with all the formality required by the company, and acknowledged before a notary. As required by the rules of the company, both copies were sent to its home office in New York to be vised by the company before becoming effective; whereupon one copy was retained by the company and the other returned to Gould, who kept it, with the policy, in his possession, and thereafter continued to pay the premiums until the expiration of the tontine period and the payment to him of the amount due thereon as hereinafter stated, when it was surrendered to the company.

It is claimed that these facts fail to disclose a valid transfer of the policy for want of any delivery of the assignment and the policy to the plaintiff. If by this is meant that an actual physical
201 delivery of the documents was essential to complete the transaction, the claim is untenable. In the first place, the formal execution and sending of the assignment to the insurance company, although in obedience to the requirement of its rules, is presumptively for the benefit of the assignee, and as between the latter and the assignor, in the absence of anything to evince a contrary purpose, will be regarded as a sufficient delivery. McDonough vs. Aetna Life Ins. Co., 78 N. Y. Supp. 217; Hurlbutt vs. Hurlbutt, 1 N. Y. Supp. 854. But, in the next place, no actual delivery was required under the (201) circumstances disclosed in this case because the assignee was incapable of receiving it. She was a minor under the care and protection of the assignor, her father, and the latter was therefore the natural custodian of her property and effects, as he was of her person. Under these circumstances no actual physical delivery was called for to perfect the title of the assignee. Burges vs. New York Life Ins. Co., 53 S. W. 602. It is urged that the fact that Gould continued to pay the premiums on the policy is evidence that he did not regard the assignment as complete. This is without force. In making the assignment to his daughter, a minor, and so far as appears without estate, Gould knew that if the premiums were not paid by him they would not be paid at all, and the presumption will not be indulged that he entered upon the transaction with the purpose of doing a thing which would result in a forfeiture of all right under the policy for want of payment of the premiums. The
202 presumption will be preferred that in continuing to pay them it was his purpose to pay them for the benefit of his daughter.

The further claim that the assignment was a conditional one and never became effective is based upon the testimony of Gould that he had no intention to make an absolute assignment to his daughter; that he told the agent of the company, when he went to the office to execute it, that he wished to make it conditional upon his dying before the policy was paid, desiring to reserve to himself the right to collect anything to be paid on the policy at its maturity, should he be alive; that the agent instead drew the assignment in the absolute form and it was signed by him without reading it, relying on the assurance of the agent that it was all right. This evidence is not sufficient to defeat the plaintiff's title. There is no suggestion of fraud in the transaction. If his evidence is true, Gould might perhaps have maintained an action to have the (202) instrument reformed for mistake, but he has not done so and no such relief is asked or may be had in this action. I am satisfied that the transfer of Gould's rights under the policy was a complete and valid transaction, and that neither he nor the insurance company can successfully assail it here. It must be borne in mind that we are not dealing with a case like those relied on by the defendants, where the rights of creditors, or innocent third parties with superior equities, are involved, but are concerned only with the rights of the assignor and his assignee as between themselves.

203 2. Is plaintiff concluded by the judgment pleaded in bar? The record discloses these facts: In 1907 Boggs & Buhl, a creditor of the plaintiff, the latter then residing in Pennsylvania, recovered a judgment against her in the Court of Common Pleas of Allegheny County in that State. That the Court obtained jurisdiction of this plaintiff in that case no question is made, due service being had upon her in accordance with the laws of Pennsylvania. In November, 1909, knowledge of the interest claimed by the plaintiff in the policy in suit having come to the judgment creditor, a writ of execution attachment issued on the judgment and was served upon the local agent of the defendant insurance company in that State and upon Joseph W. Gould, the other defendant here. At this time the plaintiff had removed from Pennsylvania to this State and taken up her residence here, and no service of the writ was had on her. Gould appeared in response to the garnishment, denying any assignment of the policy to the plaintiff here and alleging a sole right in himself to the amount due thereon. The insurance company also answered, admitting its indebtedness under the policy, but setting up that the fund was claimed by both Gould and this plaintiff, and prayed to be advised as to its rights. Other creditors of the plaintiff having levied garnishments upon the (203) insurance company against the fund, the latter filed a petition in the Court of Common Pleas asking leave to pay the money into Court, and praying that the several claimants be required to interplead and have

204 their respective rights determined. Leave was granted, the fund paid into the hands of the prothonotary, and thereafter, in February, 1910, the Court granted a rule as prayed requiring the several claimants to the fund to interplead for the purpose of determining their respective rights. It being made to appear that the

plaintiff here was then a resident of California, the Court directed that the rule be served upon her here by delivery of a copy to her personally, which was done, but plaintiff did not appear. The other parties having appeared, the Court thereafter entered a rule that a feigned issue be framed and tried to determine whether Gould had made a valid gift of the policy to the plaintiff here. A trial of this issue was had before a jury, without the presence or appearance therein of the plaintiff, and the jury found that no assignment or gift of the policy had been made to plaintiff. Upon this verdict the Court of Common Pleas entered its order or judgment directing the prothonotary to pay over the fund to Joseph W. Gould, and held that neither the plaintiff here nor her creditors had any right therein. This is the adjudication upon which the defendant company relies as a bar to plaintiff's recovery.

I think it quite obvious that this judgment in no wise concludes plaintiff's rights involved in this case. The Court of Common Pleas, by virtue of the existence upon its records of a valid unsatisfied judgment against the plaintiff, undoubtedly acquired jurisdiction by its garnishee process to determine as between plaintiff and her
205 creditors the rights of the latter to subject to the satisfaction of their judgment any debt due plaintiff, or other property of hers in Pennsylvania, to the extent of such judgment (Louisville etc. Ry. Co. vs. Deer, 200 U. S. 176; Harris vs. Balk, 198 U. S. 215; Pennoyer vs. Neff, 95 (204) U. S. 714;) but I regard it as equally certain that that Court was without jurisdiction to proceed, without the personal presence of the plaintiff, to try the question of the rights of plaintiff in the policy in suit as between her and Gould and the insurance company. The proceeding of interpleader at the instance of the insurance company, in which the feigned issue stated was sought to be tried, was in this respect quite independent of the proceeding on garnishment. (Ruff vs. Ruff, 85 Pa. St. Rep. 333.) As to the former, the Pennsylvania court was without jurisdiction of the person of the plaintiff, since the method of service upon her was wholly ineffectual for the purpose,—a proposition so thoroughly settled that the authorities need not be referred to. A Court must, to render an effectual judgment, have jurisdiction either of the person of the defendant or the res. (Pennoyer vs. Neff, supra.) The judgment of the Court of Common Pleas itself determines that it had no jurisdiction of the latter, since it is adjudged that the debt levied upon and which alone *would it* jurisdiction was not the debt of paitiff but of a third party as against whom the creditors of plaintiff had no rights.

I am satisfied, therefore, that it must be held that the judgment pleaded is not conclusive upon the plaintiff and constitutes
206 no bar to a recovery on the policy.

Judgment must accordingly go in favor of plaintiff for the amount sued for, with interest and costs, as prayed.

[Endorsed:] Filed March 10, 1913. W. B. Maling, Clerk. (205)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendant.

Engrossed Bill of Exceptions.

Be it remembered that, on the 29th day of May, 1912, at a stated term of the District Court of the United States, for the Northern District of California, Second Division, the above-entitled case came on for trial before the Honorable William C. Van Fleet, District Judge, presiding, the defendant New York Life Insurance Company, a corporation, being represented by Messrs. Page, McCutchen, Knight & Olney, and the plaintiff being represented by Frank W. Taft, Esq., Clarence Coonan, Esq., and Nat. Schmulowitz, Esq., and thereupon the following proceedings were had:

A trial by jury was duly waived in writing by each of said parties, and the said written waiver was filed with the clerk
207 of the above-entitled court and is now on file herein.

A stipulation as to the facts of said case was entered into between said parties, said stipulation having been reduced to writing and signed by counsel for each of said parties, and said stipulation so signed was filed herein and is now on file in this action, and was and is in the following words and figures to wit:

"[Title of Court and Cause.]

Stipulation [of Facts].

Stipulation.

To save the expense of taking depositions, and for the (206) purposes of trial in the above-entitled action, it is hereby stipulated and agreed by and between the plaintiff and defendant New York Life Insurance Company, as follows:

I.

It is hereby stipulated as facts:

That defendant New York Life Insurance Company, on or about the 24th day of January, 1889, executed a policy of insurance on the life of defendant Joseph W. Gould, which said policy is set forth in Exhibit 'A' to the amended answer of the defendant New York Life Insurance Company, on file herein, and delivered the same to him.

That on or about the 27th day of June, 1893, defendant Joseph W. Gould, the assured in said policy, signed the instrument, a correct copy of which is set forth on pages 44 and 45, in Exhibit 'A' to the amended answer of defendant New York Life Insurance Company:

208 That said policy remained in the possession of defendant Joseph W. Gould, the assured mentioned therein, and was never delivered to plaintiff herein; that said instrument, hereinbefore mentioned and set forth on pages 44 and 45 of said Exhibit 'A' to defendant New York Life Insurance Company's amended answer herein, was not, nor was any copy thereof, ever delivered to the plaintiff herein, but a copy of the same was delivered to defendant New York Life Insurance Company; that the notice attached to the said instrument contains a statement of the rules of defendant New York Life Insurance Company in force at the time of the signing thereof, and defendant New York Life Insurance Company executed the receipt therefor, as set forth on page 44 of Exhibit 'A' to the amended answer of defendant New York Life Insurance Company as follows:

"'The New York Life Insurance Company, in accordance with its rules, as stated below, has (207) retained the duplicate of this assignment.

JOHN A. McCALL, *Pres.*,
Per LAWES.'

That the premiums, due to defendant New York Life Insurance Company on said policy were duly and regularly paid.

That R. H. McCreary, mentioned in the testimony of defendant Joseph W. Gould, was, on or about the 27th day of June, 1893, the agent of defendant New York Life Insurance Company, and the person referred to by said defendant Joseph W. Gould in his testimony;

209 That on, prior to, and after November 11, 1909, defendant New York Life Insurance Company was authorized to do, and doing, a life insurance business in the State of Pennsylvania, and the insurance commissioner of the State of Pennsylvania had theretofore issued to defendant New York Life Insurance Company, and there was then outstanding in full force, effect and virtue, and said defendant New York Life Insurance Company was the holder of, a certificate of authority, showing that it was authorized to transact business in said State of Pennsylvania; that at said last mentioned times F. W. Hubbard, mentioned in said Exhibit 'A' to defendant New York Life Insurance Company's said amended answer, was an agent, to wit, cashier, of defendant New York Life Insurance Company, at its office in Allegheny County, State of Pennsylvania; and said F. W. Hubbard was on, prior to, and after November 11, 1909, the person appointed by defendant New York Life Insurance Company, in its behalf, in conformity with the laws of the State of Pennsylvania, to receive service of process, including a writ of execution attachment issued under or by authority of the laws of the State of Pennsylvania. That the ex-

emplification of record annexed to defendant New York Life Insurance Company's amended answer herein, and marked Exhibit 'A,' is a full, complete and correct exemplification of the (208) entire record of all proceedings had in the courts of the State of Pennsylvania with reference to the policy of life insurance and the moneys involved in the above-entitled action.

II.

It is hereby stipulated and agreed that defendant Joseph
210 W. Gould would, if called as a witness in the above-entitled action, testify as follows, to wit, and either of the parties hereto may read such testimony in evidence at the trial of the above-entitled action, subject to any legal objection as to the competency, materiality, or relevancy thereof, or any part thereof, but not subject to any objection as to the form of the statement:

Stipulated [Testimony of Joseph W. Gould, the Defendant].

I am one of the defendants in the above-entitled action, and the assured mentioned in that certain policy of life insurance issued by defendant New York Life Insurance Company on or about the 24th day of January, 1889, and numbered 305,011, and described in the complaint of plaintiff herein. On or about the 27th day of June, 1893, being desirous of assigning said policy conditionally to my daughter, the plaintiff herein, I called at the office of defendant New York Life Insurance Company, and requested R. H. McCreary, the agent there in charge of said office, to have said policy assigned to my said daughter on condition that I should die before said policy was paid in full, desiring to reserve to myself the right to collect any money to be paid on said policy at the maturity thereof if I should so long live.

The agent of said company, the said R. H. McCreary, had the instrument set forth on pages 44 and 45 of Exhibit 'A' to the amended answer of defendant New York Life Insurance Company prepared, and I signed the same on the said R. H. McCreary's assertion that it was an assignment to my said daughter of the
211 said policy only on condition that I should die before the (209) maturity of said policy, or before all the premiums were paid thereon. I did not read the assignment before executing the same, relying on the statement of the said R. H. McCreary, the agent of said company, that I was assigning it conditionally in the manner before stated. I had no intention of making an absolute assignment of said policy to my said daughter, or to any other person. I never delivered said policy or said assignment to the plaintiff, but said policy remained in my possession until I surrendered it to defendant New York Life Insurance Company. I delivered a copy of said instrument to defendant New York Life Insurance Company by reason of the notice appended thereto. The plaintiff had no knowledge whatever of the execution of said instrument by me until notified by defendant New York Life Insurance

Company upon the maturity of said policy. Said assignment was made only for the purpose of protecting the plaintiff herein in case of my death before the maturity of said policy. I wrote and signed the letter to the New York Life Insurance Company, dated September 8, 1909, as set forth on pages 87 and 88 of Exhibit 'A' to the defendant New York Life Insurance Company's amended answer herein. I paid all the premiums due or payable on said policy.

FRANK W. TAFT, *Attorney for Plaintiff.*
PAGE, McCUTCHEN, KNIGHT & OLNEY,
Attorneys for Defendant New York Life Insurance Company, a Corporation."

212 [*Testimony of Effie J. Dunlevy, for Plaintiff.*]

EFFIE J. DUNLEVY, a witness called for plaintiff, was duly sworn and testified as follows:

"EFFIE DUNLEVY, called for the plaintiff, sworn.

Mr. Taft:

Q. State your full name.
A. Effie Dunlevy.
Q. Where do you reside?
A. 903 Pine Street, San Francisco, Cal. (210)
Q. Did you know Joseph W. Gould?
A. Yes; he is my father.
Q. On June 27, 1893, where were you living?
A. With my father in Pittsburg, Pennsylvania.
Q. What was your age at that time?
A. 13 years.
Q. Was your father married at that time?
A. Yes.
Q. Were you living with him?
A. Yes.
Q. Was he supporting you?
A. Yes.
Q. For how long a time prior to June 27, 1893, were you living with your father?
A. About four years.
Q. How long after June 27, 1893, were you living with your father?
A. Until 1898.
Q. During all of that time was he caring for you and supporting you?
A. Yes.
Q. Were you living with him at his residence all that time?
A. No; about five months of the time I was not.
Q. During that five months that you were not living with him at his residence was he caring for you and supporting you?

213 A. Yes.

Q. Mrs. Dunlevy, has the amount due upon the policy of insurance here sued upon or any part thereof ever been paid to you?

A. No, sir.

No cross-examination."

The foregoing contains all of the evidence given and all of the exhibits introduced on the trial of said cause.

Thereupon, and, to wit, upon said 29th day of May, 1912, said cause was submitted to the court. Thereafter, and, to wit, on the 10th day of March, 1913, and within a stated term of said court, said court duly gave, made, and rendered its decision and filed the following decision and opinion herein: (211)

[Title of Court and Cause.]

"VAN FLEET, *District Judge:*

Plaintiff brings this action to recover $2,479.70, the cash surrender value accrued under the tontine provisions of a policy of life insurance issued by the defendant insurance company on the life of its codefendant, Joseph W. Gould, the father of plaintiff, the policy being alleged to have been assigned by Gould to plaintiff.

The defenses of the insurance company are, (1) that there was no valid or perfected assignment of the policy to the plaintiff; and (2) that plaintiff is concluded by a judgment recovered against the company by its codefendant Gould on the same demand in the Court of Common Pleas of the State of Pennsylvania, under which judgment the amount involved has been fully paid to the latter. The answer of the defendant Gould, while silent as to the judgment, sets
214 up that the assignment counted on never became perfected for reasons that will be hereafter noticed.

1. As to the validity of the alleged assignment. The policy was issued to Gould, then a resident of Pittsburg, Pennsylvania, in 1889. In 1893, while his daughter, the plaintiff, was a child of thirteen years living with him and under his protection and maintenance, he went to the office of the local agent of the company and executed an assignment of the policy to her, absolute and unconditional in form, purporting to transfer to her 'all dividend, benefit, and advantage to be had or derived therefrom.' The assignment was executed in duplicate with all the formality required by the company, and acknowledged before a notary. As required by the rules of the company, both copies were sent to its home office in New York to be vised by the company before becoming effective; whereupon one copy was retained by the company and the other returned to Gould, who (212) kept it, with the policy, in his possession, and thereafter continued to pay the premiums until the expiration of the tontine period and the payment to him of the amount due thereon, as hereinafter stated, when it was surrendered to the company.

It is claimed that these facts fail to disclose a valid transfer of the policy for want of any delivery of the assignment and the policy to the plaintiff. If by this is meant that an actual physical delivery of the documents was essential to complete the transaction, the claim is untenable. In the first place, the formal execution and sending
of the assignment to the insurance company, although in
215 obedience to the requirement of its rules, is presumptively for
the benefit of the assignee, and as between the latter and the assignor, in the absence of anything to evince a contrary purpose, will be regarded as a sufficient delivery. McDonough vs. Ætna Life Ins. Co., 78 N. Y. Supp. 217; Hurlbutt vs. Hurlbutt, 1 N. Y. Supp. 854. But, in the next place, no actual delivery was required under the circumstances disclosed in this cause because the assignee was incapable of receiving it. She was a minor under the care and protection of the assignor, her father, and the latter was therefore the natural custodian of her property and effects, as he was of her person. Under these circumstances no actual physical delivery was called for to protect the title of the assignee. Burges vs. New York Life Ins. Co., 53 S. W. 602. It is urged that the fact that Gould continued to pay the premiums on the policy is evidence that he did not regard the assignment as complete. This is without force. In making the assignment to his daughter, a minor, and so far as appears without estate, Gould knew that if the premiums were not paid by him they would not be paid at all, and the presumption will not be indulged that he entered upon the transaction with the purpose of doing a thing which would result in a forfeiture of all right under the policy for want of payment of the premiums. The presumption will (213) be preferred that in continuing to pay them it was his purpose to pay them for the benefit of his daughter.

The further claim that the assignment was a conditional one
and never became effective is based upon the testimony of
216 Gould that he had no intention to make an absolute assignment to his daughter; that he told the agent of the company, when he went to the office to execute it, that he wished to make it conditional upon his dying before the policy was paid, desiring to reserve to himself the right to collect anything to be paid on the policy at its maturity, should he be alive; that the agent instead drew the assignment in the absolute form and it was signed by him without reading it, relying on the assurance of the agent that it was all right. This evidence is not sufficient to defeat the plaintiff's title. There is no suggestion of fraud in the transaction. If his evidence is true, Gould might, perhaps, have maintained an action to have the instrument reformed for mistake, but he has not done so, and no such relief is asked or may be had in this action. I am satisfied that the transfer of Gould's rights under the policy was a complete and valid transaction, and that neither he nor the insurance company can successfully assail it here. It must be borne in mind that we are not dealing with a case like those relied on by the defendants, where the rights of creditors, or innocent third parties with superior equities, are involved, but are concerned only with the rights of the assignor and his assignee as between themselves.

2. Is plaintiff concluded by the judgment pleaded in bar?

The record discloses these facts: In 1907 Boggs & Buhl, a creditor of the plaintiff, the latter then residing in Pennsylvania, recovered a judgment against her in the Court of Common Pleas of
217 Allegheny County in that State. That the Court obtained jurisdiction of this plaintiff in that case no question (214) is made, due service being had upon her in accordance with the laws of Pennsylvania. In November, 1909, knowledge of the interest claimed by the plaintiff in the policy in suit having come to the judgment creditor, a writ of execution attachment issued on the judgment and was served upon the local agent of the defendant insurance company in that State and upon Joseph W. Gould, the other defendant here. At this time the plaintiff had removed from Pennsylvania to this State and taken up her residence here, and no service of the writ was had on her. Gould appeared in response to the garnishment, denying any assignment of the policy to the plaintiff here and alleging a sole right in himself to the amount due thereon. The insurance company also answered, admitting its indebtedness under the policy, but setting up that the fund was claimed by both Gould and this plaintiff, and prayed to be advised as to its rights. Other creditors of the plaintiff having levied garnishments upon the insurance company against the fund, the latter filed a petition in the Court of Common Pleas asking leave to pay the money into court, and praying that the several claimants be required to interplead and have their respective rights determined. Leave was granted, the fund paid into the hands of the prothonotary, and thereafter, in February, 1910, the Court granted a rule as prayed requiring the several claimants to the fund to interplead for the purpose of determining their respective rights. It be-
218 ing made to appear that the plaintiff here was then a resident of California, the Court directed that the rule be served upon her here by delivery of a copy to her personally, which was done, but plaintiff did not appear. The other parties having appeared, the Court thereafter entered a rule that a feigned issue be framed and tried to determine whether Gould had made a valid gift of the policy to the plaintiff here. A trial of this issue was had before a jury, (215) without the presence or appearance therein of the plaintiff, and the jury found that no assignment or gift of the policy had been made to plaintiff. Upon this verdict the Court of Common Pleas entered its order or judgment directing the prothonotary to pay over the fund to Joseph W. Gould, and held that neither the plaintiff here nor her creditors had any right therein. This is the adjudication upon which the defendant company relies as a bar to plaintiff's recovery.

I think it quite obvious that this judgment in no wise concludes plaintiff's rights involved in this case. The Court of Common Pleas, by virtue of the existence upon its records of a valid unsatisfied judgment against the plaintiff, undoubtedly acquired jurisdiction by its garnishee process to determine as between plaintiff and her creditors the rights of the latter to subject to the satisfaction of their judgment any debt due plaintiff, or other property of hers in

Pennsylvania, to the extent of such judgment (Louisville etc. Ry. Co. vs. Deer, 200 U. S. 176; Harris vs. Balk, 198 U. S. 215; Pennoyer vs. Neff, 95 U. S. 714); but I regard it as equally certain that that court was without jurisdiction to proceed, without the
219 personal presence of the plaintiff, to try the question of the rights of plaintiff in the policy in suit as between her and Gould and the insurance company. The proceeding of the interpleader at the instance of the insurance company, in which the feigned issue stated was sought to be tried, was in this respect quite independent of the proceeding on garnishment. (Ruff vs. Ruff, 85 Pa. St. Rep. 333.) As to the former, the Pennsylvania court was without jurisdiction of the person of the plaintiff, since the method of service upon her was wholly ineffectual for the purpose,—a proposition so thoroughly settled that the authorities need not be referred to. A Court must, to render an effectual judgment, have—(216) jurisdiction either of the person of the defendant or the res. (Pennoyer vs. Neff, supra.) The judgment of the Court of Common Pleas itself determines that it had no jurisdiction of the latter, since it is adjudged that the debt levied upon and which alone would give it jurisdiction was not the debt of plaintiff, but of a third party as against whom the creditors of plaintiff had no rights.

I am satisfied, therefore, that it must be held that the judgment pleaded is not conclusive upon the plaintiff and constitutes no bar to a recovery on the policy.

Judgment must accordingly go in favor of plaintiff for the amount sued for, with interest and costs, as prayed.

[Endorsed:] Filed March 10, 1913. W. B. Maling, Clerk."

That thereafter, and to wit, on the 10th day of March,
220 1913, judgment was entered in said action in favor of said plaintiff, and against the defendant New York Life Insurance Company, in accordance with the said opinion, in the sum of Three Thousand One Hundred Ninety-five and 70/100 (3,195.70) Dollars, together with plaintiff's costs of suit, and against the defendant Joseph W. Gould, that said Gould be barred from participating in the said sum, or any part thereof;

That thereafter, and, to wit, on the 11th day of March, 1913, notice was duly given to the defendant New York Life Insurance Company of the entry of said last mentioned judgment;

That thereafter, and within the time required by law, and, to wit, on the 12th day of April, 1913, defendant New York Life Insurance Company duly served upon plaintiff's attorneys, and filed in the above-entitled court in the above-entitled matter, its petition for a new trial; that, at all times from and after said 12th day of April, 1913, up to and including the 20th day of October, 1913, said last mentioned petition for a new trial was (217) pending before said District Court; that, on said 20th day of October, 1913, said District Court duly gave, made, and filed its order denying said petition for a new trial;

That, on the 19th day of March, 1913, pursuant to a stipulation signed by counsel for plaintiff and for said defendant New York Life Insurance Company on said date, said District Court ordered that said defendant New York Life Insurance Company have until the first day of April, 1913, within which to prepare its bill of exceptions to be used upon its writ of error herein, said
221 order being signed by said court and filed herein in the office of the clerk of said court; that thereafter, and from time to time, stipulations were entered into in writing by and between counsel for plaintiff and counsel for said defendant New York Life Insurance Company, extending the time of said defendant New York Life Insurance Company continuously up to and including the 15th day of September, 1913; that, in each instance, orders were made upon each of said stipulations by said District Court, extending the time of said defendant New York Life Insurance Company, as specified in said stipulations.

The foregoing constitutes all of the proceedings had, and all of the testimony offered and received, and all of the exhibits introduced on the trial of said cause.

And now, within the time required by law and the rules of this court, said defendant New York Life Insurance Company proposes the foregoing as and for its bill of exceptions, and prays that the same may be settled and allowed as correct.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendant, New York Life Insurance Company. (218)

[*Stipulation as to Bill of Exceptions.*]

It is hereby stipulated that the foregoing bill of exceptions is correct, and that it contains all of the testimony offered and received, and all of the exhibits introduced, upon the trial of the said cause, and all of the proceedings had upon the trial of the said
222 cause, provided, however, that the plaintiff does not agree that the foregoing bill of exceptions was proposed or filed within the time required by law and the rules of this court, and that the plaintiff does not waive any of her rights to object to the filing of the foregoing bill of exceptions, or to object to its consideration, if allowed, by the Circuit Court of Appeals.

Dated October 30th, 1913.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Attorneys for Plaintiff.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for Defendant, New York Life Insurance Company.

Order Settling, Certifying, and Allowing Bill of Exceptions.

The foregoing bill of exceptions being now presented in due time and found to be correct, I do hereby certify that the said bill is a true bill of exceptions, and that it contains all of the testimony offered and received, and all of the exhibits introduced, and all of the proceedings had on the trial of said cause.

Dated October 31st, 1913.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California, Second Division. (219)

Receipt within proposed Bill of Exceptions and Engrossed Bill of Exceptions and receipt of a copy is hereby admitted this
223 30th day of October, 1913.

Plaintiff reserves all right to object to the filing of the within on consideration thereof, by the Circuit Court of Appeals.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Att'ys for Plaintiff.

[Endorsed:] Filed Oct. 31, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (220)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Affidavit of Service of Summons in Severance.

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, ss:

John W. Parker, being first duly sworn, deposes and says:

That he is and at all the times herein mentioned was a male person over the age of eighteen (18) years, and not a party to nor interested in the above-entitled action; that Joseph W. Gould,
224 one of the defendants in the above-entitled action, and the person mentioned in the annexed summons in severance, is alleged to have appeared in the above-entitled action; that said Joseph W. Gould has not left any address with the clerk of the above-entitled court as provided by Rule 35 of this court, nor has any attorney left such address for or in behalf of said Joseph W. Gould;

that affiant duly served the annexed summons in severance upon said Joseph W. Gould by delivering to and leaving with the Clerk of the above-entitled Court, at the office of said Clerk, a true and correct copy of said summons in severance for said Joseph W. Gould, on the 13th day of November, 1913, as required by Rule 34 of this Court. (221)

That so far as known to affiant said Joseph W. Gould has no attorney in the above-entitled action.

And further affiant saith not.

JOHN W. PARKER.

Subscribed and sworn to before me this 13th day of November, 1913.

[SEAL.] FRANCIS KRULL,
United States Commissioner, Northern Dist. of California. (222)

225 In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Summons in Severance.

To Joseph W. Gould, Esquire.

You are hereby invited to join with the undersigned to prosecute a writ of error in the above entitled cause from the United States Circuit Court of Appeals in and for the Ninth Circuit to the United States District Court, Northern District of California, Second Division, to reverse the judgment in the above-entitled cause given, made and rendered against you and the undersigned on the 10th day of March, 1913, or the undersigned shall prosecute said writ of error without joining you as a party.

NEW YORK LIFE INSURANCE COMPANY, A CORPORATION,
By PAGE, McCUTCHEN, KNIGHT & OLNEY,
McCUTCHEN, OLNEY & WILLARD,
Its Attorneys.

[Endorsed:] Filed Nov. 13, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (223)

226 In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Petition for Writ of Error.

New York Life Insurance Company, a corporation, defendant in the above-entitled action, feeling itself aggrieved by the decision of the Court and the judgment entered herein on the 10th day of March, 1913; comes now by Messrs. Page, McCutchen, Knight & Olney and McCutchen, Olney & Willard, its attorneys, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said defendant shall give and furnish upon such writ of error, and that upon the giving of such security, all further proceedings in this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

227 Dated: November 13th, 1913.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Defendant.

[Endorsed:] Filed Nov. 13, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (224)

In the District Court of the United States for the Northern District of California, Second Division.

No. 15,041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Assignment of Errors.

Now comes New York Life Insurance Company, a corporation, defendant above named, and makes and files the following assignment of errors, upon which it will rely in the prosecution of its writ of error in the above-entitled cause.

I.

The District Court above named for the Northern District of California, Second Division, erred in entering judgment in favor of plaintiff and against said defendant, New York Life Insurance Company, a corporation, upon the agreed facts.

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II.

The said Court erred in entering judgment in favor of plaintiff and against the defendant, New York Life Insurance Company, a corporation, and the defendant, Joseph W. Gould, upon the agreed facts.

III.

The said Court was without jurisdiction to enter judgment, or any judgment, in said cause against the defendant, Joseph W. Gould.

IV.

The decision was contrary to, and against law, because (225) said Court erred in making, giving, rendering and entering judgment in favor of plaintiff and against defendant, New York Life Insurance Company, and erred in failing to give, make, render and enter its judgment in favor of said defendant.

V.

Said Court erred in entering judgment in favor of the plaintiff and against defendant, New York Life Insurance Company, because it appears from the undisputed facts of the case that the plaintiff was not entitled to recover the proceeds arising from the policy of life insurance sued upon by virtue of its tontine provisions.

VI.

The Court erred in rendering judgment for plaintiff and against said defendant because it appears from the undisputed facts of the case that the tontine benefits of the policy of life insurance sued upon by plaintiff were not assigned by Joseph W. Gould, the beneficiary named in said policy of life insurance, to plaintiff, and plaintiff never became the owner of, or entitled to sue for,
229 the proceeds of said policy accruing under the tontine provisions of said policy.

VII.

The Court erred in rendering judgment in favor of plaintiff and against defendant, New York Life Insurance Company, a corporation, because it appears from the undisputed facts of the case that

Joseph W. Gould, the beneficiary named in the policy of life insurance sued upon by plaintiff, retained to himself all rights and benefits to arise under the tontine provisions of said policy, and never assigned the same, nor transferred the same in any manner to plaintiff.

VIII.

Said Court erred in rendering judgment in favor of plaintiff (226) and against said defendants, New York Life Insurance Company, a corporation, and Joseph W. Gould, because it appears from the undisputed facts of the case that on or about the 19th day of September, 1910, it was adjudicated by a Court of competent jurisdiction that plaintiff had no right, title or interest in and to the proceeds of said life insurance policy as more fully appears from Exhibit "A" to the amended answer to said New York Life Insurance Company on file herein.

IX.

Said Court erred in overruling the demurrer of said defendant, New York Life Insurance Company, a corporation, to plaintiff's complaint.

X.

The said Court was without jurisdiction to try said cause without a jury owing to the fact that defendant, Joseph W. Gould, did not consent, in writing, to the trial of said cause by the Court
230 without a jury, nor, in writing, waive said jury in the manner required by law in the statutes of the United States, all of which appears from the records of said Court and from the bill of exceptions of defendant, New York Life Insurance Company, a corporation, on file herein.

XI.

The decision and judgment was contrary to and against law because the Court erred in giving judgment for the plaintiff and against the defendant, New York Life Insurance Company, and in holding and deciding that the delivery of a copy of the assignment referred to and set forth in plaintiff's complaint to New York Life Insurance Company was, or constituted, a delivery of said assignment to the plaintiff herein, it appearing from the facts contained in the agreed statement of facts that the delivery of said copy of said assignment to said New York Life Insurance (227) Company did not in law constitute a delivery of said assignment to said plaintiff.

XII.

The decision and judgment were contrary to and against law because the Court erred in giving judgment for plaintiff and against defendant, New York Life Insurance Company, and in holding and deciding that the defendant, Joseph W. Gould, had, prior to the

commencement of the action, made an absolute assignment of all his right, title and interest to all benefits to accrue under the policy of insurance sued upon to the plaintiff herein, and had delivered said assignment to said plaintiff, it appearing from the agreed
231 statement of facts that if the assignment referred to in plaintiff's complaint was delivered to New York Life Insurance Company by said Gould for said plaintiff, such delivery was a conditional delivery only and was not to take effect as a delivery to said plaintiff unless the said Gould should die within the tontine period provided for in said policy of insurance.

XIII.

The decision and judgment were contrary to and against law because the Court erred in giving judgment for plaintiff and against defendant, New York Life Insurance Company, in holding and deciding that Joseph W. Gould, the beneficiary named in the policy of life insurance of the New York Life Insurance Company, sued upon by plaintiff had, prior to the commencement of the action, assigned to plaintiff the particular benefits arising from said policy which were the subject of this action, to wit, benefits arising under the tontine provisions of said policy, it appearing from the agreed statement of facts and from the undisputed facts of the case that at the time of the delivery of the assignment referred to in plaintiff's complaint to the New York Life Insurance Company, said Gould intended to transfer to said (228) plaintiff only the benefits to arise under said policy, other than the tontine benefits, and intended to retain to himself any benefits that might arise at any time under said policy by reason of its tontine provisions.

XIV.

The decision was contrary to and against law because the
232 Court erred in giving judgment for plaintig against the defendant, New York Life Insurance Company, because it appeared from the allegations of plaintiff's complaint that the defendant, Joseph W. Gould, was in possession of the original policy of insurance sued upon by plaintiff and was claiming and claimed the right to recover against the defendant, New York Life Insurance Company, the same proceeds of said policy which were being sued for by plaintiff, and because it appeared from the records in this case that the Court was and is without jurisdiction to render a judgment binding upon said defendant, Joseph W. Gould.

Wherefore, said New York Life Insurance Company, a corporation, plaintiff in error herein, prays that the judgment of the above-entitled court be reversed, and that a new trial be granted.

Dated: San Francisco, California, November 13th, A. D. 1913.

PAGE, McCUTCHEN, KNIGHT &
OLNEY,
McCUTCHEN, OLNEY & WILLARD,
Attorneys for said Plaintiff in Error.

[Endorsed:] Filed Nov. 13, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (229)

233 In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Order Allowing Writ of Error.

Upon motion of McCutchen, Olney & Willard, attorneys for the defendant, New York Life Insurance Company, a corporation, and upon filing a petition for a writ of error, and an assignment of errors,

It is ordered that a writ of error be, and it hereby is, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and the same is, hereby fixed at Four Thousand (4,000) Dollars; said bond to serve as a cost bond and a supersedeas bond on said writ of error.

It is further ordered that said New York Life Insurance Company be, and it is, hereby allowed a severance from its codefendant herein, Joseph W. Gould, and that said New York Life Insurance Company be permitted to prosecute said writ of error without the pres-

234 ence of said Joseph W. Gould as a party thereto.

Dated: November 13th, 1913.

WM. C. VAN FLEET,
Judge of said Court.

[Endorsed:] Filed Nov. 13, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. (230)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Bond on Writ of Error.

Know all men by these presents: That we, New York Life Insurance Company, a corporation, as principal, and Massachusetts Bonding and Insurance Company a corporation organized under the laws

of the State of Massachusetts, and duly authorized to execute bonds and undertakings in judicial proceedings pending in the courts of the United States, as surety, are held and firmly bound unto Effie J. Gould Dunlevy, plaintiff in the above-entitled action in the full and just sum of Four Thousand (4000) Dollars, lawful money of the United States to be paid to the said plaintiff, Effie J. Gould Dunlevy, to which payment well and truly to be made, we
235 bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, representatives and assigns firmly by these presents.

Sealed with our seals, and dated this 13th day of November, 1913.

Whereas, the above-named defendant, New York Life Insurance Company, a corporation, has sued out a writ of error in the United States Circuit Court of Appeals in and for the Ninth Circuit, to reverse the judgment entered in the above-entitled action in (231) favor of the plaintiff therein and against the defendants therein for the sum of Four Thousand (4000) Dollars, including interest and costs.

Now, therefore, the condition of this obligation is such that if the above-named New York Life Insurance Company, a corporation, shall prosecute such writ of error to effect, and answer all damages and costs if it shall fail to make good said plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

In witness whereof, said New York Life Insurance Company, a corporation, has caused its name to be hereunto subscribed, and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, and said Massachusetts Bonding and Insurance Company, a corporation, has caused its name to be hereunto subscribed, and its corporate seal to be hereunto affixed by its officers there-
236 unto duly authorized this 13th day of November, 1913.

NEW YORK LIFE INSURANCE COMPANY, A *Corporation,*
By ARTHUR HUTCHINSON AND MASSACHUSETTS BONDING AND INSURANCE COMPANY,
By FRANK M. HALL AND S. M. PALMER,
Attorneys in Fact.

[Seal Massachusetts Bonding & Ins. Co.]

[Endorsed:] Bond on Writ of Error.

Approved:

WM. C. VAN FLEET, *Judge.*

Filed Nov. 14, 1913. W. B. Maling, Clerk. (232)

[*Certificate of Clerk U. S. District Court to Transcript of Record.*]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do
237 hereby certify the foregoing two hundred and thirty-two (232) pages, numbered from 1 to 232, inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause, as the same remain of record and on file in the office of the Clerk of said court, and that the same constitutes the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $123.60, that said amount was paid by Messrs. McCutchen, Olney & Willard, attorneys for the New York Life Insurance Company; and that the original writ of error and citation issued in said cause are hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 13th day of December, A. D. 1913.

[SEAL.] WALTER B. MALING,
Clerk of the United States District Court,
Northern District of California. (233)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

238 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the District Court of the United States, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before

you, or some of you, between Effie J. Gould Dunlevy and New York Life Insurance Company, a corporation, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said New York Life Insurance Company, a corporation, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties (234) aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city and county of San Francisco, in the State of California, on the 13th day of December, A. D. 1913, in the Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and
239 customs of the United States should be done.

Witness, the Honorable William C. Van Fleet, United States District Judge for the Northern District of California, the 13th day of November, in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.] WALTER B. MALING,
Clerk of the United States District Court,
Northern District of California.
By J. A. SCHAERTZER,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET, *Judge.* (235)

Receipt of copy of the within Writ of Error is hereby admitted this 14th day of November, 1913.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Att'ys for Plaintiff.

[Endorsed:] No. 15041. In the District Court of the United States, Northern District of California, Second Division. Effie J. Gould Dunlevy, Plaintiff, vs. New York Life Insurance Company, a Corporation, and Joseph W. Gould, Defendants. Writ of Error. Filed Nov. 14, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[*Answer to Writ of Error.*]

The answer of the Judges of the District Court of the United
240 States in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is made in the writ of error, with all things touching the same,

we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, at the day and place contained in the writ of error, in a certain schedule to the writ annexed as we are in said writ of error commanded.

By the Court.

WALTER B. MALING, *Clerk.* (236)

In the District Court of the United States, Northern District of California, Second Division.

No. 15041.

EFFIE J. GOULD DUNLEVY, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Defendants.

Citation on Writ of Error.

The President of the United States of America to Effie J. Gould Dunlevy and to Frank W. Taft, Clarence Coonan, and Nat Schmulowitz, Her Attorneys, Greeting:

You and each of you are hereby cited and admonished to be, and appear, in the Circuit Court of Appeals for the Ninth Circuit,
241 at the City and County of San Francisco, State of California, within thirty (30) days from and after the date this citation bears, pursuant to a writ of error filed in the office of the Clerk of the United States District Court for the Northern District of California, Second Division, in the above-entitled cause, wherein Effie J. Gould Dunlevy is plaintiff, and New York Life Insurance Company, a corporation, and Joseph W. Gould, are the defendants, to show cause, if any there be, why the judgment made and rendered in the above-entitled cause (237) on the 10th day of March, 1913, against the said New York Life Insurance Company, a corporation, and the said Joseph W. Gould, as defendants in said writ of error mentioned, should not be corrected and reversed, and why said justice should not be done to the parties in that behalf.

Witness, the Honorable William C. Van Fleet, United States District Judge for the Northern District of California, this 13th day of November, 1913.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

Attest:
[SEAL.]

W. B. MALING,
Clerk of the Above-entitled Court,
By J. A. SCHAERTZER,
Deputy Clerk. (238)

242 Receipt of copy of the within Citation is hereby admitted this 14th day of November, 1913.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Att'ys for Plaintiff.

[Endorsed:] No. 15041. In the District Court of the United States, Northern District of California, Second Division. Effie J. Gould Dunlevy, Plaintiff, vs. New York Life Insurance Company, a Corporation, and Joseph W. Gould, Defendants. Citation on Writ of Error. Filed Nov. 14, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed:] No. 2349. United States Circuit Court of Appeals for the Ninth Circuit. New York Life Insurance Company, a Corporation, and Joseph W. Gould, Plaintiffs in Error, vs. Effie J. Gould Dunlevy, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Received and filed December 13, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,
By MEREDITH SAWYER,
Deputy Clerk.

242½ 244 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

245 At a stated term, to wit; the October Term, A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the fifth day of March, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William B. Gilbert, Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable Frank S. Dietrich, District Judge.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, et al., Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Order of Submission.

Ordered, above-entitled cause argued by Mr. J. M. Mannon, Jr., counsel for the plaintiffs in error, and by Mr. Clarence Coonan, counsel for the defendant in error, and submitted to the Court for consideration and decision, with leave to counsel for the plaintiffs in error to file a reply brief within twenty (20) days from date.

246 At a stated term, to wit, the October Term, A. D., 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the eighteenth day of May, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William B. Gilbert, Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable Charles E. Wolverton, District Judge.

No. —.

In the Matter of the Filing of Certain Opinions and of the Filing and Recording of Certain Judgments and Decrees of this Court.

[*Order Directing Filing of Opinions and Filing and Recording of Judgment.*]

Ordered, that each of the opinions this day rendered by the Court in the following entitled causes be filed by the clerk, and that a Judgment or Decree in each cause be filed and recorded in the minutes in accordance with the opinion filed therein:

* * * * * * *

New York Life Insurance Company, a Corporation, et al., Plaintiffs in Error, vs. Effie J. Gould Dunlevy, Defendant in Error. No. 2349.

* * * * * * *

Further ordered, that the Dissenting Opinion of the Honorable Frank S. Dietrich, United States District Judge, in the cause
247 entitled New York Life Insurance Company, a Corporation, et al., Plaintiffs in Error, vs. Effie J. Gould Dunlevy, Defendant in Error, No. 2349, be filed by the clerk.

[*Opinion U. S. Circuit Court of Appeals.*]

In the United States Circuit Court of Appeals for the Ninth Circuit.

NEW YORK LIFE INSURANCE COMPANY (a Corporation) and JOSEPH W. GOULD, Plaintiffs in Error,

vs.

EFFIE J. GOULD DUNLEVY, Defendant in Error.

E. J. McCutchen, Warren Olney, Jr., and Charles W. Willard, for Plaintiff in Error New York Life Insurance Company.

Frank W. Taft, Clarence Coonan, and Nat Schmulowitz, for the Defendant in Error.

Before Gilbert and Ross, Circuit Judges, and Dietrich, District Judge.

The plaintiff in error issued a policy of life insurance to one Joseph W. Gould. The defendant in error, the daughter of Gould, as assignee of the policy, recovered judgment thereon in the court below. The parties to the action will be designated herein plaintiff and defendant, as they were in the court below. The policy was tontine, and it insured the life of Gould in the sum of $5,000,
248 with the stipulation that if Gould were living on January 22, 1909, the policy might be surrendered for the sum of $2,479.70. It was for that sum that the plaintiff sued and recovered judgment in the court below. The case was tried before the Court without a jury, upon the pleadings and an agreed statement of facts. In its answer the defendant set up two defenses: First, that the plaintiff was not entitled to maintain any action because Gould's assignment was never delivered to her, and because the assignment was not intended by Gould to transfer to her the tontine benefits to arise therefrom; second, because by reason of certain garnishee proceedings instituted by creditors of the plaintiff in a state court of the State of Pennsylvania, the defendant had already been compelled to pay the full amount due under the policy. The date of the policy was January 24, 1889. On June 27, 1893, when the plaintiff was 13 years of age, and was living with her father, he made the assignment, which is as follows: "For value received, I hereby assign and transfer unto Effie J. Gould, of Pittsburg, Pa., the policy of insurance known as No. 305,011, issued by the New York Life Insurance Company upon the life of Joseph W. Gould, of Pittsburg, Pa., and all dividend, benefit and advantage to be had or derived therefrom, subject to the conditions of the said policy, and to the rules and regulations of the company." The assignment was signed, sealed and acknowledged by Gould. The agreed statement of facts was as follows: "That on or about the 27th day of June, 1893, defendant Joseph W. Gould, the assured
249 in said policy, signed the instrument, a correct copy of which is set forth on pages 44 and 45, in Exhibit 'A' to the

amended answer of defendant New York Life Insurance Company.

"That said policy remained in the possession of defendant Joseph W. Gould, the assured mentioned therein, and was never delivered to plaintiff herein; that said instrument, hereinbefore mentioned and set forth on pages 44 and 45 of said Exhibit 'A' to defendant New York Life Insurance Company's amended answer herein, was not, nor was any copy thereof, ever delivered to the plaintiff herein, but a copy of the same was delivered to defendant New York Life Insurance Company; that the notice attached to the said instrument contains a statement of the rules of defendant New York Life Insurance Company in force at the time of the signing thereof, and defendant New York Life Insurance Company executed the receipt therefor, as set forth on page 44 of Exhibit 'A' to the amended answer of defendant New York Life Insurance Company as follows:

" 'The New York Life Insurance Company, in accordance with its rules, as stated below, has retained the duplicate of this assignment.

" 'JOHN A. McCALL, *Pres.*,
" 'Per LAWES.' "

It was also agreed in substance that Gould, if called as a witness, would, subject to any legal objection as to the competency or relevancy of his testimony, testify in substance as follows: That his intention in executing the assignment and delivering it to the defendant was solely to protect the plaintiff in the event of his
250 death prior to the expiration of the tontine period; that he wished her to receive the $5,000 only in the event of his death prior to January 22, 1909; that he had no intention of making an absolute assignment of the policy to her, and never delivered the assignment to her, but that the policy remained in his possession until he surrendered it to the defendant; that he delivered a copy of the assignment to the defendant by reason of the notice appended thereto, and that the plaintiff had no knowledge of the execution of said assignment until notified by the defendant on the maturity of the policy, and that he paid all the premiums due or payable on the policy. In addition to the agreed statement of facts, transcripts were filed of certain proceedings in the Court of Common Pleas of the County of Allegheny, State of Pennsylvania.

GILBERT, *Circuit Judge*, after stating the case:

Before considering the assignments of error, it is necessary to determine what questions are properly before this Court for decision. The record discloses no findings of facts, either general or special, in accordance with Sections 649-700 of the Revised Statutes, and no requests for instructions. In the absence of findings by the trial Court, inferences of facts to establish ultimate facts cannot be drawn by an Appellate Court from the testimony which may be found in the record. Norris v. Jackson, 9 Wall 125; W. L. Perkins Co. v. Von Baumbach, 185 Fed. 265; Streeter v. Sanitary Dist. of Chicago, 133 Fed. 124; Anglo-American Land M. & A.

Co. v. Lombard, 132 Fed. 721. But the agreed statement of
251 facts, so far as it sets forth ultimate facts as distinguished from evidentiary facts, may be considered as taking the place of special findings. Wilson v. Merchants Loan & Trust Co., 183 U. S. 121. It follows that the stipulation as to the testimony which would be given by Joseph W. Gould, if called as a witness in the present case, must be disregarded.

It is contended that the Court below erred in overruling the defendant's demurrer to the complaint, which was based upon the ground that there was contained therein no allegation of a delivery of the assignment to the plaintiff, or that she was notified or had knowledge of the assignment, also that in the absence of proof of such delivery and notice to the plaintiff, the Court erred in entering judgment against the defendant upon the agreed statement of facts. By the decided weight of authority it is held that an assignment of a policy is a contract distinct and separate from the contract of insurance, and is governed by the law of the place where the assignment is made. 2 Whart. Conf. of Laws, 467*g*, and cases there cited; Johnson v. Mutual Life Ins. Co., 180 Mass. 407; Russel v. Grigsby, 168 Fed. 577. The assignment in the present case was made in Pennsylvania, and if its validity depended upon a statute of that state, which had been construed by the Courts thereof, such construction would be controlling here. The defendant cites the case of Scott v. Dickson, 108 Pa. St., 6, a case in which the assured executed an assignment of the policy to one Scott, a friend, and lodged a copy thereof with the insurance company in accordance with its rules, but no copy of the assignment was ever given
252 to the assignee, nor was he notified thereof, and the policy remained in the possession of the assured, who paid the premiums on it up to the time of his death. It was held that the delivery of the assignment to the company was not the equivalent of a delivery to the assignee. But in so holding, the Supreme Court of Pennsylvania, construed no statute of that state. In Smith v. Hawthorn, 22 Penn. Co. Court, 519, it was held that where a husband assigned a policy of life insurance to his wife and children, the fact that the policy and the assignment were found amongst his papers after his death was not sufficient to raise a presumption that the policy and the assignment had not been delivered. The Court quoted with approval the language of the opinion in Turner v. Warron, 160 Pa. 336, where it was said: "As between strangers it would be improbable that the grantee in a deed would permit it after delivery to remain in the possession of the grantor. It is not so, however, where the grantee is the wife of the grantor, and he has a safe for the keeping of valuable papers." In Appeal of Madeira, 4 At., 908, the Supreme Court of Pennsylvania said that an assignment without valid consideration and a gift are equal, and added: "The legal requisition is that the intention of the donor be established by clear and precise evidence, and that the delivery be *secundum subjectam materian*," and the Court intimated that if there had been in that case an assignment of the policy to the wife of the insured, and it had been evidenced by nothing more than its

deposit in a box or other receptacle common to the use of
253 both husband and wife, there would be no doubt as to her right to the policy. While these decisions of courts of Pennsylvania are not controlling, we think they are in harmony with the doctrine that the essentials of a delivery of an assignment are those which accord with the nature of the transaction, the circumstances and the relations between the parties; that while the mere execution of an assignment and a delivery of a copy thereof to the insurance company without notice to the assignee, the assured continuing to hold the policy and pay the premiums thereon, would not in all cases be a sufficient assignment, it would be sufficient if the assignee sustained to the assured the relation of wife or minor child.

It has been held in other jurisdictions that the delivery may be constructive, and that an assignment of an insurance policy may be sustained where the intent of the assignor to assign is clearly shown, notwithstanding that the policy remains in his possession, and that filing the assignment or a copy thereof with the insurer in accordance with its requirements to that effect, is a sufficient substitute for actual delivery to the assignee. In McDonough v. Aetna Life Ins. Co., 78 N. Y. S. 217, the Court said: "The assignments came to the office of the company presumably for the purpose of notifying the company that some one other than any of the parties to the contract of insurance claimed title to the policies. It was not an improper place to lodge the assignments. In the course of business, it was a very proper place, not only for safe-keeping, but to prevent the moneys upon the policies when they should
254 become due, from being paid to another * * * If the assignor, the insured, sent them, then the presumption would be that he sent them for the benefit of the assignee. If that was the only delivery, it would be a good delivery, being for the benefit of the assignee." See, also, Hurlbutt v. Hurlbutt, 1 N. Y. S. 854. In Northwestern Mut. Life Ins. Co. v. Wright, 153 Wis. 252, the Court said: "The instrument of transfer may be delivered to a third person with intention not to recall it, and the transaction be complete, even as indicated, without the new owner having present knowledge thereof. A delivery to the third person, and acceptance by him for the purposes of the transaction is a delivery to the new owner — where such transaction is beneficial to the new owner, the law supplies the rest; acceptance by such new owner is presumed until the contrary is shown." And in Burges v. New York Life Ins. Co., 53 S. W. 602, the Court of Civil Appeals of Texas held that actual delivery of an assignment of an insurance policy to the assignee, who was the assignor's adopted child, was unnecessary to validate the assignment. In that case the assignment was delivered to the insurer. The court said: "Even in the absence of evidence of an actual manual delivery, we are warranted in holding that the facts and circumstances concerning the donor and donee, would constitute a delivery within the meaning of the law."

The defendant cites decisions to the proposition that in order to invest an infant of tender years with title to property, there must be more than a mere execution of an instrument which the

255 grantor retains in his custody, in the absence of satisfactory proof that it was his intention that such instrument should operate to convey the property immediately to the infant. But we find in the present case ample evidence of the intention of the assignor that the assignment should operate immediately. Everything that was necessary to carry out that intention was done. The assignment was signed, sealed, acknowledged, and lodged with the insurance company in compliance with its rules. The assignor was the natural guardian of the assignee, who was his daughter, and a minor, and was in his care and control. In retaining the papers in his possession, he should be deemed to have held them for her as her parent and guardian.

But it is contended that there is absence of proof to show the intention of the assignor to assign the tontine as well as the life benefits of the policy. The only evidence which we have as to the assignor's intention is furnished by the language of the assignment itself. It recites that for value received, the policy "upon the life of Joseph W. Gould" is assigned, "and all the dividend, benefit and advantage to be had or derived therefrom." Language more apt could not have well been selected to transfer absolutely the whole interest of the insured in the policy, as well the life benefits as the tontine. The trial court correctly held, therefore, that the policy and all rights thereunder, had been assigned to the plaintiff.

It is contended that the plaintiff's cause of action is barred by the proceedings in the court of Pennsylvania, which are pleaded
256 in the amended answer. In 1907, while the plaintiff was a resident of the State of Pennsylvania, Boggs & Buhl recovered judgment against her for a debt of $537.76, in a court of that State. Some two years later execution was issued upon the judgment, and Joseph W. Gould and the local agent of the defendant were garnisheed. The defendant in answering the writ set forth the fact of the issuance of the policy and the assignment thereof, and alleged that Gould claimed to be the owner thereof. Gould answered, claiming that the policy and all rights thereunder belonged to him. At that time the plaintiff had become a resident of the State of California. The statutes of Pennsylvania provide that when the sheriff is notified that the property which he has levied upon belongs to a person other than the defendant in the execution process, he shall enter a rule in the court, out of which the execution or process issued, on the claimant, to show cause why an issue should not be framed to determine the ownership, and that notice of the rule shall be given to the plaintiff, the defendant and the claimant. 2 Purdon's Digest, p. 1551. On February 5, 1910, on the petition of the garnishee, a rule was granted on the plaintiff and the defendant in the execution and also upon Joseph W. Gould, the claimant, to show cause why they should not interplead, and why the insurance company should not be permitted, when it was determined to whom the money ought to be paid, to pay the same into court for the benefit of the person entitled to receive the same, and that service of a
257 copy of the rule, petition and the order be made upon Mrs. Dunlevy by serving her personally at her residence in Cali-

fornia. The rule was made returnable February 26, 1910. It appears by an affidavit that on February 18, 1910, personal service was made upon her, in San Francisco. The papers served upon her were a copy of the petition of the Insurance Company, a notice of its attorneys, and a copy of the order of the court of date February 5, 1910, reciting that a rule was granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, to show cause why they should not interplead together, for the purpose of ascertaining to which of the parties the money in the hands of the Insurance Company belonged, and the order recites, "And it appearing that Effie J. Dunlevy is a resident of the State of California, It is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of same by mail, or registered mail, to her at her last known address. Rule returnable the 26th day of February, 1910." The only attestation of the order are the words appended thereto, "By the Court." Mrs. Dunlevy made no appearance in the proceeding, and on May 3d, an order of the Court was made, framing the issue, which was whether Joseph W. Gould made a valid gift of the policy to Effie J. Dunlevy. While the Insurance Company expressed its willingness to pay the money into court, it was not actually paid into court until March 19, 1910. On September 19, 1910, a jury returned a verdict in the cause entitled Boggs & Buhl, A. J.
258 Gould and Lincoln National Bank, Interveners, v. Joseph W. Gould, as follows: "We, the jurors empanelled in the above-entitled case, find a verdict for defendant." No judgment was ever entered upon the verdict of the jury, but upon October 1, 1910, the Court ordered that the money be paid to Joseph W. Gould. Counsel for plaintiff contend that the service of the rule to show cause and the other papers was ineffectual to require the plaintiff's appearance in those proceedings, and that the Court never acquired jurisdiction of her. Where the object of an action is to determine personal rights only, and the proceeding is merely in personam, constructive service on a non-resident "is ineffectual for any purpose." Dull v. Blackman, 169 U. S. 243. But assuming that the proceeding in the court of Pennsylvania was a proceeding quasi in rem, the object of which was to determine to whom belonged the money that had been seized under the writ of the court, and that the money owing by the Insurance Company, notwithstanding that it had not been paid into court when the rule to show cause was made, was in legal effect in the possession of the Court and subject to its judgment, we have to inquire whether the service was made in accordance with the laws of the State. The law to which we must refer is found in the Act of April 6, 1859, 2 Purdon's Digest, 1422, which provides that it shall be lawful for any court of Pennsylvania having equity jurisdiction of any suit concerning goods, chattels, etc., or liens, mortgages, or incumbrances thereon, or where any Court has acquired juris-
259 diction of the subject matter by service of its process on one or more of the principal defendants, to order and direct that any subpœna or other process in such suit may be served upon any

defendant then residing out of the jurisdiction of the court, and upon affidavit of such service, to proceed as fully and effectually as if the same had been made within the jurisdiction of the court. But the statute expressly provides that "such order limit a time, depending on the place where such process is to be served, after the service thereof, within which compliance with the requirements thereof must be made by such defendant or defendants; such process to be returnable at such time after the service thereof, as such court shall, by special order, direct." The proceedings in the case under consideration fail in several respects to comply with these provisions of the statute. But the most vital defect is that the order wholly fails to limit a time after the service thereof, within which compliance with the requirements thereof must be made, or to direct by "special order" that the process be returnable at a stated time after the service thereof. The order which was served upon Mrs. Dunlevy was returnable in the court of a distant State within eight days after the service upon her, while, if she had been a resident of that State and served therein, she could not, under the State law, have been required to appear and plead until ten days after the date of the service. 1 Purd. Dig. 244. No default was taken against her, and nowhere in the proceedings of that court is there a recital or finding that service had been made upon her. The records show that
260 from and after the return of the service upon her of the order to show cause, she was ignored in the proceedings. Substituted service upon a non-resident defendant being of statutory origin, the law must be strictly complied with (Jennings v. Johnson, 148 Fed. 337), and where the service is so defective as not to confer jurisdiction on the court, the judgment is open to collateral attack. Johnson v. Hunter, 147 Fed. 133; Guaranty Trust Co. v. Green Cove Railroad, 139 U. S. 137; Noble v. Union River Logging Railroad, 147 U. S. 165, 173. In Amy v. Watertown No. 1, 130 U. S. 301, 316, the Court said: "The cases are numerous which decide that where a particular method of serving process is pointed out by statute, that method must be followed," and on p. 317, the Court quoted with approval the following language of the Supreme Court of Wisconsin: "When the statute prescribes a particular mode of service, that mode must be followed. Ita lex scripta est. There is no chance to speculate whether some other mode will not answer as well. This has been too often held by this court to require further citations."

Applicable to the contention of the defendant that having paid the money into the Pennsylvania court, it discharged the debt and was no longer concerned with the disposition of the money, is the following from Drake on Attachments, sec. 695: "It follows hence, that a garnishee must, for his own protection, inquire, first, whether the court has jurisdiction of the defendant, and, next, whether it has jurisdiction of himself. If the jurisdiction exists as to both,
261 he has no concern as to the eventual protection which the judgment of the court will afford him; it will be complete." In the proceedings upon the writ of garnishment, the garnishee had ample opportunity before it paid the money into court to dis-

cover that the defendant in the writ had not been duly served with process, and that the court had no jurisdiction over her.

It is suggested that the lien created by the writ of garnishment upon the fund owing by the insurance company on the policy still subsisted at the time when the judgment was rendered in the court below against the defendant herein, and that at least the amount of the debt owing to Boggs & Buhl, the judgment creditors, should have been deducted from the amount for which the judgment was rendered against the insurance company in the court below. To this it is to be said that the judgment in the garnishment proceedings, in which proceedings the court had jurisdiction of the judgment creditor, the garnishee, and the claimant, but not of the judgment debtor, finally disposed of the rights of Boggs and Buhl under that garnishment, and determined that their writ created no lien on the money which was in the hands of the insurance company, and that the money belonged to the claimant. With that judgment and the payment of the money to the claimant the jurisdiction of that court over the subject matter of the present action came to an end.

We hold that the proceedings in the Pennsylvania court present no defense to the plaintiff's cause of action.

262 The judgment of the court below is affirmed.

[Endorsed:] Opinion, U. S. Circuit Court of Appeals. Filed May 18, 1914. [Signed:] F. D. Monckton, Clerk.

[*Dissenting Opinion.*]

In the United States Circuit Court of Appeals for the Ninth Circuit.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEAVY, Defendant in Error.

DIETRICH, *District Judge* (Dissenting):

I concur in the view that we cannot consider certain testimony contained in the record, and in the further view that the Pennsylvania court never accquired jurisdiction to try the "feigned issue." But there being no averment of the actual or constructive delivery of the instrument of assignment to the defendant in error, or to another for her use, it is thought that the complaint fails to state a cause of action, and that the judgment should therefore be reversed. This question is entirely distinct from that of the sufficiency of the proofs to warrant a finding of delivery, which is, as I understand, the question discussed in the opinion.

But if the sufficiency of the complaint be assumed, I still think the judgment should be modified by deducting therefrom

263 the amount of the Boggs & Buhl judgment, including interest and costs. It is conceded that this latter judgment was regularly entered in a suit, in which the Pennsylvania court had

plenary jurisdiction, and that upon this judgment execution garnishment process was duly issued, and a valid service thereof was made upon the plaintiff in error. In so far as concerns the amount of the garnishment claim, it was a case, therefore, falling squarely within the rule quoted in the opinion, with apparent approval, from Drake on Attachment. The Court had jurisdiction of the defendant (the defendant in error here) and of the garnishee (the plaintiff in error here). Jurisdiction existing as to both, the garnishee could rest assured that by payment into court of the amount of the writ its protection would be complete. The fact that it paid more into court than was required to satisfy the writ, and sought protection as to the excess through a "feigned issue" proceeding, which was ineffective because jurisdiction as to such issue was not acquired over the person of the defendant in error, cannot operate to deprive it of the protection to which it was entitled upon yielding to the valid writ of garnishment. And as to the "feigned issue" order or judgment, I am unable to see how it can be held void for want of jurisdiction in favor of one party and valid as against the other; if void as to one, it is void as to both. It is suggested that in that proceeding the court had jurisdiction of the judgment creditor and of the claimant, but in considering an issue between the plain-
264 tiff in error and the defendant in error, how can the presence of other parties operate to confer jurisdiction? I am unwilling to hold, in effect, that the plaintiff in error was, at the time of the proceedings in Pennsylvania, not indebted to the defendant in error, and thus enable her to escape her creditors there, and at the same time hold that it was and still is indebted to her, thus requiring it to pay the claim a second time.

[Endorsed:] Dissenting Opinion. Filed May 18, 1914. [Signed:] F. D. Monckton, Clerk.

[*Judgment, U. S. Circuit Court of Appeals.*]

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEAVY, Defendant in Error.

In Error to the District Court of the United States for the Northern District of California, Second Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, Second Division, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged

by this Court, that the judgment of the said District Court
265 in this cause be, and hereby is affirmed, with costs in favor of the defendant in error and against the plaintiffs in error.

It is further ordered and adjudged by this Court that the defendant in error recover against the plaintiffs in error for her costs herein expended, and have execution therefor.

[Endorsed:] Judgment, U. S. Circuit Court of Appeals. Filed and Entered May 18, 1914. [Signed:] F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the thirteenth day of October, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William B. Gilbert, Circuit Judge, Presiding; Honorable Erskine M. Ross, Circuit Judge; Honorable William W. Morrow, Circuit Judge.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,

vs.

EFFIE J. GOULD DUNLEVY, Defendant in Error.

266 *Order Denying Petition for Rehearing.*

On consideration thereof, and by direction of the Honorable William B. Gilbert and Erskine M. Ross, Circuit Judges, and Frank S. Dietrich, District Judge, before whom the cause was heard, it is ordered that the Petition, filed June 17, 1914, on behalf of the plaintiff in error, New York Life Insurance Company, for a rehearing of the above-entitled cause be, and hereby is denied.

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday the fourth day of November, in the year of our Lord one thousand nine hundred and fourteen.

Present: The Honorable William B. Gilbert, Circuit Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable Charles E. Wolverton, District Judge.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,

vs.

EFFIE J. GOULD DUNLEVY, Defendant in Error.

267 *Order Staying Issuance of Mandate Under Rule 32.*

Upon motion of Mr. J. M. Mannon, Jr., counsel for the plaintiff in error the New York Life Insurance Company, and good cause therefor appearing, it is ordered that the issuance of the Mandate under Rule 32 of this Court in the above-entitled cause be and hereby is stayed until ten (10) days after the Supreme Court of the United States passes upon an application to be made thereto on behalf of said plaintiff in error for the issuance of a writ of certiorari in the above-entitled cause.

268 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,

vs.

EFFIE J. GOULD DUNLEVY, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and sixty-seven (267) pages, numbered from and including one (1) to and including two hundred and sixty-seven (267), to be a true copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, certified under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this seventh day of November, A. D. 1914.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

269 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which New York Life Insurance Company is plaintiff in error and Effie J. Gould Dunlevy is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command
270 you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-third day of December, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

271 [Endorsed:] File No. 24,447. Supreme Court of the United States. No. 703, October term, 1914. New York Life Insurance Company, petitioner, vs. Effie J. Gould Dunlevy. Writ of certiorari.

Docketed. No. 2349. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 7, 1915. F. D. Monckton, clerk U. S. Circuit Court of Appeals for the Ninth Circuit. By Paul P. O'Brien, deputy clerk.

272 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto that the certified copy of the record and proceedings in the above entitled cause, which was furnished as an Exhibit to the Petition of New York Life Insurance Company for a Writ of Certiorari and filed in the Supreme Court of the United States and docketed therein as No. 703, October Term, 1914, was a full, true and correct transcript of the record and proceedings in said cause,

and that said certified copy of said record and proceedings may be taken as a return to the Writ of Certiorari issued out of said Supreme Court of the United States under date of the 23rd day of December, in the year of our Lord, One Thousand Nine Hundred and Fourteen, in said case in said Supreme Court, entitled "New York Life Insurance Company, Petitioner, versus Effie J. Gould Dunlevy, Respondent," and docketed as No. 703, October Term, 1914,
273 with the same force and effect as if the record and proceedings in said cause were duly attached to said Writ of Certiorari and returned therewith.

NEW YORK LIFE INSURANCE COMPANY,
(Signed) By EDWARD J. McCUTCHEN AND
JAMES H. McINTOSH,
McCUTCHEN, OLNEY & WILLARD,
Its Attorneys.
EFFIE J. GOULD DUNLEVY,
(Signed) By FRANK W. TAFT AND
CLARENCE COONAN,
NAT SCHMULOWITZ,
Her Attorneys,

Dated, San Francisco, California, this *8th* day of January, 1915.

[Endorsed:] Stipulation as to Return to Writ of Certiorari. Filed Jan. 7, 1915. F. D. Monckton, Clerk. By (Signed) Paul P. O'Brein, Deputy Clerk.

274 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding two pages, numbered 1 and 2, respectively, to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari," filed in the above-entitled cause on the 7th day of January, A. D. 1915, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit

Court of Appeals for the Ninth Circuit, at the City of San Francisco, the State of California, this 8th day of January, A. D. 1915.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

275 United States Circuit Court of Appeals for the Ninth Circuit.

No. 2349.

NEW YORK LIFE INSURANCE COMPANY, a Corporation, and JOSEPH W. GOULD, Plaintiffs in Error,
vs.
EFFIE J. GOULD DUNLEVY, Defendant in Error.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause do attach to the said Writ and send to the said Supreme Court a certified copy of a Stipulation. entered into by and between the attorneys of record, that the Transcript of Record now on file in said cause in the said Supreme Court shall stand as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 7th day of January, A. D. 1915.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of January, A. D. 1915.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

276 [Endorsed:] File No. 24,447. Supreme Court U. S. October term, 1914. Term No. 703. New York Life Insurance Company, petitioner, vs. Effie J. Gould Dunlevy. Writ of certiorari and return. Filed January 15, 1915.

2

Office Supreme Court, U. S.
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JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1914.

No. [redacted] 290

NEW-YORK LIFE INSURANCE CO.,
Petitioner,

vs.

EFFIE J. GOULD DUNLEVY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

EDWARD J. MCCUTCHEN,
WARREN OLNEY, JR.,
CHARLES W. WILLARD,
J. M. MANNON, JR., and
JAMES H. MCINTOSH,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

No._____ .

NEW-YORK LIFE INSURANCE COMPANY, Petitioner, *vs.* EFFIE J. GOULD DUNLEVY, Respondent.	*Petition for Writ of Certiorari.*

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, New-York Life Insurance Company, represents to this Honorable Court that the case of New-York Life Insurance Company, Plaintiff-in-Error, against Effie J. Gould Dunlevy, Defendant-in-Error, lately decided by the United States Circuit Court of Appeals for the Ninth Circuit, affirming by a divided court a judgment of the District Court of the United States for the Northern District of California, is a civil case in which the judgment of said Circuit Court of Appeals is made final by the provisions of The Judicial Code, and therefore your Petitioner now here applies to this Honorable Court to require by Certiorari or otherwise said case to be certified to the Supreme Court for its review and determination, for that said judgment unless reversed will compel your Petitioner to pay in full a second time a policy

of insurance which it already duly paid into Court in Pittsburgh, pursuant to a valid Writ of Execution Attachment Sur Judgment issued out of said Pittsburgh Court and duly served upon your Petitioner there for the purpose of reaching the proceeds of said policy to satisfy a money judgment, the validity of which is not questioned, which Boggs & Buhl duly recovered in said Pittsburgh Court against said Effie J. Dunlevy, the plaintiff in said California suit, and will deprive your Petitioner of its constitutional rights by failing to give full Faith and Credit to the judicial proceedings of the courts of the State of Pennsylvania.

And in this behalf your Petitioner further says,—

First.—Boggs & Buhl, a corporation, sued Effie J. Dunlevy in the Court of Common Pleas for Allegheny County, Pennsylvania, at Pittsburgh, on an account for goods sold and delivered (p. 44, et seq.) and she was duly served with process of Summons in said case at her then place of residence in Allegheny County on the 24th day of June, 1907 (p. 58). July 8, 1907, judgment by default was duly entered in said suit against her for $537.76 (pp. 59 and 43). The validity of said service of Summons on Mrs. Dunlevy and of the judgment recovered against her is not questioned in this record (p. 217).

Second.—Your Petitioner became liable to pay the value of its policy No. 305,011 (p. 84) on the life of Joseph W. Gould, the father of Mrs. Dunlevy, at the expiration of its tontine period, January 24, 1909, but was prevented from promptly paying it because of the conflicting claims thereto of Mrs. Dunlevy, on the one hand, and the insured, her father, on the other.

Third.—The rival claims of Mrs. Dunlevy and of her father to the proceeds of said policy were as follows,—

Mrs. Dunlevy claimed the proceeds thereof under an assignment of it to her (p. 101), which her father executed in 1893, when she was thirteen years old (p. 212), but which (p. 211) he never delivered to her. He filed the assignment with the Company in 1893 (p. 102) but she knew nothing about the assignment until notified thereof by the Company at the maturity of the policy. He never delivered the policy to her (p. 211).

Mr. Gould claimed the proceeds of the policy on the ground (p. 112) that by the assignment he did not intend (p. 117) to pass any title to the policy except in the event of his death before its maturity, and that neither the assignment nor the policy ever was delivered to her, and that he paid all of the premiums thereon.

Fourth.—While this dispute between the rival claimants was going on, Boggs & Buhl, November 11, 1909 (p. 66), duly caused process of (p. 64) "Execution Attachment Sur Judgment" in said suit of Boggs & Buhl against Effie J. Dunlevy to be served on your petitioner at Pittsburgh (p. 66), thereby attaching (p. 66) "all and singular the debts due said defendant", Effie J. Dunlevy, and duly citing your petitioner to answer as garnishee in said suit. This same process ran to Mrs. Dunlevy's father, Joseph W. Gould, and was served on him the same day (p. 66) it was served on your petitioner.

Boggs & Buhl, at the time of suing out this process of Execution Attachment Sur Judgment, also then and there duly filed interrogatories (p. 67) to be answered by said garnishees with respect of any indebtedness either garnishee might then owe said Judgment Debtor.

Fifth.—February 5, 1910, your Petitioner duly filed its written answer as garnishee and its answers to said interrogatories (pp. 75 to 120 inclusive), therein and thereby admitting its indebtedness on account of said policy and alleging its readiness to pay it, but fully setting

forth the conflicting claims thereto of said rival claimants and concluding its said answer with the following prayer (p. 81),—

> "WHEREFORE said garnishee having fully answered prays that it may be duly advised as to its rights and duties in the premises, and that upon its discharge it may be allowed a reasonable sum for its costs and disbursements."

Sixth.—The same day your Petitioner answered as garnishee, it also filed in said case of Boggs & Buhl against Effie J. Dunlevy a petition setting forth said rival claims of Effie J. Dunlevy, on the one hand, and said Joseph W. Gould, on the other, to the proceeds of said policy, and praying (p. 127),—

> "Your Honorable Court for a rule on said Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of petitioner belongs, and why your petitioner should not be permitted, when it is determined to whom the money ought to be paid, to pay the said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto, and for such further orders in the premises as to your Honors may seem necessary."

And thereupon the Court that day duly made the following order (p. 128),—

> "And, now, to wit, Febry. 5th, 1910, the foregoing petition of the New-York Life Insurance Company, Garnishee, being presented in open Court, upon consideration thereof and on motion of Gordon & Smith, attorneys for petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New-York Life Insurance Company belongs, and why said

Company should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of the same by mail or registered mail, to her last known address."

Seventh.—Effie J. Dunlevy was duly and personally served in San Francisco, California, February 18, 1910 (p. 135), with written notice (p. 137) that in said case of Boggs & Buhl against her "a rule to show cause why Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not interplead together for the purpose of ascertaining to which of said parties $2,479.70 in the hands of the New-York Life Insurance Company belongs, has been granted in the above-entitled case returnable February 26, 1910", and a copy of said petition upon which said Court made said order to show cause and of said order itself was also there and then duly served on her. But she never paid any attention thereto.

Eighth.—February 23, 1910, The Lincoln National Bank, a creditor of Mrs. Dunlevy, sued her at Pittsburgh and there garnished your Petitioner (p. 163), and on the same date Charles Elste, another creditor of Mrs. Dunlevy, brought a like suit and served garnishment process on your Petitioner.

Thereupon, and on the 19th of March, 1910, your Petitioner filed another petition in said suit of Boggs & Buhl against Effie J. Dunlevy (p. 161), therein directing the Court's attention to its said petition of February 5, 1910, the allegations thereof and said order made thereon, and therein further alleged the serving upon it of said writs of garnishment in said several suits of The Lincoln Na-

tional Bank and Charles Elste against said Effie J. Dunlevy, concluding its said petition with the following prayer (p. 163),—

> "Wherefore, your Petitioner prays your Honorable Court to make an order permitting it to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this Court, to abide the result of the Issue to be framed by the Court, and for such other and further relief as the nature of the case may require."

And thereupon, in said case of Boggs & Buhl against Effie J. Dunlevy, the Court there and then made the following order (p. 164),—

> "And now, to wit, March 19, 1910, the foregoing petition of the New-York Life Insurance Company, garnishee, presented in open Court, and it appearing that the consent of the Lincoln National Bank of Pittsburgh and of Charles Elste, has been obtained, upon consideration thereof, and upon motion of Gordon & Smith, Attorneys for Petitioner, it is ordered, adjudged and decreed that the New-York Life Insurance Company be given leave to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-hundredths ($2,479.70) Dollars into this Court, to abide the result of the issue to be framed by this Court."

Ninth.—Thereafter your Petitioner, as garnishee, duly paid said proceeds of said policy into said Court in said case of Boggs & Buhl against Effie J. Dunlevy, and the Clerk of the Court duly received and held said proceeds subject to the further order of the Court in said case, as is shown by the following entry which the Clerk then made in the Appearance Docket in said case of Boggs & Buhl against Dunlevy, to-wit (p. 62),—

> "Mch. 21, 1910, Received of Gordon & Smith, attys. for New York Life Insurance Co. the sum of Twenty-Four Hundred Seventy-nine and 70/100 ($2,479.70)

Dollars, less poundage on same, leaving the sum of Twenty-Four Hundred Seventy-One and no/100 ($2,471.00) Dollars, which sum I have deposited subject to the further order of Court."

Tenth.—What was done about the proceeds of this policy after your Petitioner, as garnishee, thus paid it into the Pittsburgh Court to the credit of said case of Boggs & Buhl against Mrs. Dunlevy, is wholly immaterial in an independent suit brought by her to make your Petitioner pay it a second time. For she was in the Pittsburgh Court in the Boggs & Buhl case as a Judgment Debtor, and payment into that Court, pursuant to said Writ of Execution Attachment Sur Judgment and said order of the Court, was as between her and your Petitioner the same in legal effect as payment to her.

But these things done by the Pittsburgh Court after your Petitioner so paid the policy into that Court, are the basis of the judgment of the California Court holding your Petitioner liable to pay Mrs. Dunlevy this policy again, and, therefore, for the convenient understanding of the California Court's decision, they should be stated here and are as follows,—

1. The same day that the Court ordered your Petitioner to pay the proceeds of the policy into Court in the Dunlevy case, the Court also made an order in that case (p. 62) that a "Feigned Issue" be made up and tried for the purpose of determining what the Court should do with the money thus paid into Court. Although this Feigned Issue was put upon a docket apparently kept in the Pittsburgh Court for the purpose of trying such questions as they arose in cases regularly pending in the Court, it was not an independent case, but like any reference, was, in legal effect, merely an inquiry in the case of Boggs & Buhl against Dunlevy for the purpose of finding out to whom the money paid into Court in that case belonged, all the parties claiming the fund being in Court

in that case, or assenting to the payment into Court in that case and to the Court's inquiry.

Boggs & Buhl and Mrs. Dunlevy were in Court in that case as the parties thereto. Mr. Gould was in Court in that case as a garnishee, and also assented to the inquiry and took part in it. The Lincoln National Bank assented in writing to the payment of the money into Court in that case and intervened therein (p. 62), and Charles Elste, the only other claimant, assented in writing (p. 166) to said payment into Court.

2. In the decision of the Court ordering the Feigned Issue to be tried, the Court held that Mrs. Dunlevy (p. 161) "is the actor upon whom rests the burden of establishing her title. Hence she and those representing her in interest in the fund must be named as plaintiffs in the Feigned Issue, and it is so ordered".

3. The issue as to the rights of said several claimants to said fund was duly tried September 19, 1910 (p. 174), and found in favor of Mr. Dunlevy's father, the insured (p. 170). Mrs. Dunlevy did not appear at the trial of the question of the right to the money and thereafter the Court duly ordered the Clerk to pay to Mr. Gould said proceeds of said policy, which had been (p. 172) "received by him (the Clerk) in proceedings at No. 253 First Term, 1910, of this Court", which said "No. 253—First Term, 1910" was said case of Boggs & Buhl *v.* Effie J. Dunlevy (p. 60). And the Clerk duly complied with said order.

Eleventh.—Mrs. Dunlevy commenced this suit against your Petitioner to recover the proceeds of said policy in California January 4, 1910 (p. 6), after said Writ of Execution Attachment Sur Judgment had been served on your Petitioner as aforesaid in said Boggs & Buhl suit against her in Pittsburgh.

Your Petitioner answered in California in April, 1910 (p. 33), in its answer alleging said judgment against Mrs.

Dunlevy in said case of Boggs & Buhl against her at Pittsburgh, the service upon it therein of said Writ of Execution Attachment Sur Judgment, its answer to said Writ, said order of the Court directing your Petitioner to pay, and its payment of, the proceeds of said policy into said Court in said cause, and attached to and made a part of its said answer (p. 41) a duly certified (p. 192) transcript of said proceedings in said case of Boggs & Buhl *v.* Dunlevy.

Twelfth.—The Court tried the California case on an agreed statement of facts (p. 207 et seq.), the material part of which, so far as your Petitioner is concerned, was (p. 209) the certified copy of the record of the Pittsburgh Court in the case of Boggs & Buhl against Dunlevy, which was attached as an Exhibit and made a part of the defendant's answer, and which the parties agreed (p. 209) at the trial was "a full, complete and correct exemplification of the entire record of all proceedings had in the Courts of the State of Pennsylvania with reference to the policy of life insurance and the moneys involved in the above-entitled action."

Mrs. Dunlevy testified on the trial (p. 212) but her testimony is not material to your Petitioner's case.

The learned Trial Court and the majority of the Circuit Court of Appeals, which followed the reasoning of the Trial Court, missed entirely the real point in the case, namely, that your Petitioner, as garnishee, by paying the proceeds of the policy into court in Pittsburgh under the circumstances aforesaid in a case in which Mrs. Dunlevy was a party defendant regularly served with process of summons, had thereby discharged its liability to her on account of said policy. Passing by this controlling fact, the Court dealt only with the so-called Feigned Issue which was formed and tried after your Petitioner discharged its obligation by paying the proceeds of the policy into Court as aforesaid, treated said

Feigned Issue as an Independent suit, and therefore held that the judgment in the Feigned Issue was not binding upon Mrs. Dunlevy because she was not served with process of summons, and did not appear, therein.

Nor does the dissenting opinion, which holds that "the judgment should be modified by deducting therefrom the amount of the Boggs & Buhl judgment, including interest and costs", hit directly the legal merits of the case. Your Petitioner did not agree to pay this policy in parts, it agreed to pay it in one sum as a whole. And when a Court having jurisdiction over the owner of the policy undertook by proper legal process to subject the policy to the satisfaction of a judgment of the Court against the policy-holder, the Court had authority to order your Petitioner to pay the policy, and it was its duty to pay it, in one sum into Court.

Nor did your Petitioner agree in the policy to pay one creditor of the policy-holder one sum and another another; no more did it agree to administer the policy-holder's insolvent estate. It obligated itself to do precisely what it did do in the Pittsburgh Court, nothing more. It discharged its entire undertaking once and for all when it paid the policy into the Pittsburgh Court under the circumstances which have been stated.

Your Petitioner furnishes as an Exhibit to this Petition a certified copy of the entire transcript of record of said California case, including the proceedings in the United States Circuit Court of Appeals for the Ninth Circuit.

Wherefore your Petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to the Supreme Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said Cir-

cuit Court of Appeals in said case therein entitled "New York Life Insurance Company, a Corporation, Plaintiff-in-Error, vs. Effie J. Gould Dunlevy, Defendant-in-Error, No 2349", pursuant to Section 240 of The Judicial Code, and that said judgment of said Circuit Court of Appeals in said case, and every part thereof, may be reversed by this Honorable Court, and that your Petitioner may have such other or further relief or remedy in the premises as to this Honorable Court may seem meet and in conformity with said act.

And your Petitioner will ever pray, etc.

EDWARD J. McCUTCHEN,
Attorney for Petitioner.

WARREN OLNEY, JR.,
CHARLES W. WILLARD,
J. M. MANNON, JR., and
JAMES H. McINTOSH,
of Counsel.

STATE OF NEW YORK,
COUNTY AND CITY OF NEW YORK, } *ss.*

JAMES H. McINTOSH, of lawful age, being first duly sworn, deposes and says that he is one of the counsel for New-York Life Insurance Company, the Petitioner; that he prepared the foregoing Petition, and that the allegations thereof are true as he verily believes.

James H. McIntosh

Subscribed in my presence and sworn to before me this 7th day of November, 1914.

Ida Taylor

Notary Public, No. 64 Kings County,
Certificate filed in New York Co., No. 79.
My Commission expires March 30, 1916.

Seal

Office Supreme Court, U. S.
FILED
NOV 9 1915
JAMES D. MAHER
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,

vs.

EFFIE J. GOULD DUNLEVY.

BRIEF FOR PETITIONER.

E. J. McCUTCHEN,
WARREN OLNEY, JR.,
CHARLES W. WILLARD,
J. M. MANNON, JR., AND
JAMES H. McINTOSH,
Attorneys for Petitioner.

Supreme Court

OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,
vs.
EFFIE J. GOULD DUNLEVY.

Brief for Petitioner.

Statement of the Case.

MAY IT PLEASE THE COURT,—

The question in this case is,—Does the judgment of the Federal District Court for California here complained of, which compels the Insurance Company to pay a second time a policy of insurance which it had already duly paid into the State Court in Pennsylvania pursuant to an order of the Pennsylvania Court made after the Company's answer to a Writ of Execution Attachment Sur. Judgment and Garnishment Process duly issued out of said Pennsylvania Court at Pittsburgh and served there upon the Company in a suit in which Mrs. Dunlevy, the plaintiff in the California suit, was defendant duly

served with process of summons and in which a judgment, the validity of which is not questioned, stood against her, deprive the Company of its constitutional rights by failing to give full faith and credit to the judicial proceedings of the Courts of Pennsylvania?

This question arises as follows,—

1. Boggs & Buhl, a Pennsylvania corporation, sued Effie J. Dunlevy, the plaintiff in this case, in the Court of Common Pleas for Allegheny County, Pennsylvania, at Pittsburgh, on an account for goods sold and delivered (p. 24 *et seq.*), and she was duly served with process of summons in said case at her then place of residence in Allegheny County, on the 24th day of June, 1907 (p. 34). July 8, 1907, judgment by default was duly entered in said Court against her for $537.76 (p. 34). The validity of said service of summons on Mrs. Dunlevy and of the judgment recovered against her is not questioned in this record (p. 124).

2. Your Petitioner, New York Life Insurance Company, became liable to pay the value of its policy No. 305,011 (p. 47 *et seq.*) on the life of Joseph W. Gould, the father of Mrs. Dunlevy, at the expiration of its tontine period, January 24, 1909, but was prevented from promptly paying it because of the conflicting claims thereto of Mrs. Dunlevy on the one hand and of the insured, her father, on the other.

3. The rival claims of Mrs. Dunlevy and of her father to the proceeds of said policy were as follows,—

Mrs. Dunlevy claimed the proceeds thereof under an assignment of it to her (p. 58), which her father executed in 1893 when she was only thirteen years old (p. 121), but which (p. 120) he never delivered to her. He filed the assignment with the Company in 1893 (p. 58), but she knew nothing about the assignment until notified thereof by the Company at the maturity of the policy.

He never delivered either the policy or the assignment to her (p. 120 *et seq.*).

Mr. Gould claimed the proceeds of the policy on the ground (p. 120 *et seq.*) that by the assignment he did not intend to pass any title to the policy except in the event of his death before its maturity, and that neither the assignment nor the policy ever was delivered to her, and that he paid all the premiums.

4. While this dispute between the rival claimants was going on, Boggs & Buhl, November 11, 1909 (p. 38), duly caused to be issued out of said Court in said case of Boggs & Buhl against Effie J. Dunlevy and served upon the Company at Pittsburgh (p. 38) a Writ of (p. 61) Execution Attachment Sur. Judgment and Garnishment Process, thereby attaching (p. 37) "all and singular the debts due to said defendant," Effie J. Dunlevy, and duly citing the Company to (p. 37) "appear before our said Court to be holden at Pittsburgh in and for said County on the first Monday of December next, to show cause why the judgment aforesaid should not be levied of the effects of said defendant in their hands," and at the same time duly filed and served upon the Company interrogatories (p. 38 *et seq.*) to be answered by it as garnishee with respect of any indebtedness it then owed Mrs. Dunlevy, the judgment debtor.

5. February 5, 1910, the Company duly filed its written answer as garnishee and its answer to said interrogatories (*pp.* 40 *to* 68, *inclusive*), therein and thereby admitting its indebtedness on account of said policy and alleging its readiness to pay, but fully setting forth the conflicting claims thereto of said rival claimants and concluding its answer with the following prayer (p. 47),—

> "Wherefore said garnishee having fully answered prays that it may be duly advised as to its rights and duties in the premises, and that upon its discharge it may be allowed a reasonable sum for its costs and disbursements."

6. With its answer as garnishee the Company filed in said case of Boggs & Buhl against Dunlevy a petition setting forth said rival claims of Effie J. Dunlevy, on the one hand, and said Joseph W. Gould, on the other, to the proceeds of said policy, and praying (p. 73),—

> "Your Honorable Court for a rule on said Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of petitioner belongs, and why your petitioner should not be permitted, when it is determined to whom the money ought to be paid, to pay the said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto, and for such further orders in the premises as to your Honors may seem necessary."

Thereupon the Court that day made the following order (p. 74),—

> "And now, to wit, February 5th, 1910, the foregoing petition of the New York Life Insurance Company, Garnishee, being presented in open Court, upon consideration thereof, and on motion of Gordon & Smith, attorneys for petitioner, a rule is granted on Effie J. Dunlevy, Joseph W. Gould and Boggs & Buhl, Incorporated, to show cause why they should not interplead together for the purpose of ascertaining to which of said parties the money in the hands of the New York Life Insurance Company belongs, and why said Company should not be permitted, when it is determined to whom the money ought to be paid, to pay said sum of Two Thousand Four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars into Court for the benefit of such person as shall appear to be entitled thereto. And it appearing that the said Effie J. Dunlevy is a resident of the State of California, it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition

and order, or by sendig a copy of the same by mail or registered mail, to her last known address.

"Rule returnable the 26th day of February, 1910."

7. Effie J. Dunlevy was duly and personally served in San Francisco, California, February 18, 1910 (p. 77 *et seq.*) with written notice that in said case of Boggs & Buhl against her (p. 78) "a rule to show cause why Effie J. Dunlevy, Jos. W. Gould and Boggs & Buhl, Incorporated, should not interplead together for the purpose of ascertaining to which of said parties $2,479.70 in the hands of the New York Life Insurance Company belongs, has been granted in the above-entitled case returnable February 26, 1910," and a copy of the petition upon which the Court made said order to show cause and of said order itself was there and then duly served on her, but she never paid any attention thereto, nor came into the Pittsburgh Court to protect her interests.

8. February 23, 1910, the Lincoln National Bank, another creditor of Mrs. Dunlevy, sued her at Pittsburgh and there garnished the Company (p. 94), and on the same date Charles Elste, still another creditor of Mrs. Dunlevy, brought another suit and (p. 94) garnished the Company.

Thereupon and on the 19th of March, 1910, the Company filed another petition in said suit of *Boggs & Buhl v. Dunlevy* (p. 93), therein directing the Court's attention to its said petition of February 5, 1910, and the allegations thereof and the order made thereon, and therein further alleged the serving upon it of said writs of garnishment in said several suits of the Lincoln National Bank and Charles Elste against said Effie J. Dunlevy, concluding with the following prayer (p. 94),—

"Wherefore, your petitioner prays your Honorable Court to make an order permitting it to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this Court, to abide the result

> of the Issue to be framed by the Court, and for such other and further relief as the nature of the case may require."

And thereupon in said case of *Boggs & Buhl v. Effie J. Dunlevy* the Court made the following order (p. 95),—

> "And now, to wit, March 19, 1910, the foregoing petition of the New York Life Insurance Company, garnishee, presented in open Court, and it appearing that the consent of the Lincoln National Bank of Pittsburgh and of Charles Elste, has been obtained, upon consideration thereof, and upon motion of Gordon & Smith, attorneys for petitioner, it is ordered, adjudged and decreed that the New York Life Insurance Company be given leave to pay the sum of Two Thousand Four Hundred Seventy-nine and Seventy One-Hundredths ($2,479.70) Dollars into this Court, to abide the result of the issue to be framed by this Court."

9. Thereafter and on the 21st day of March the Company, as garnishee, duly paid the proceeds of said policy into said Court to the credit of the case of *Boggs & Buhl v. Effie J. Dunlevy,* as is shown by the Clerk's entry therein as follows (p. 36),—

> "Mch. 21, 1910, Received of Gordon & Smith, attys. for New York Life Insurance Co., the sum of Twenty-four Hundred Seventy-nine and 70/100 ($2,479.70) Dollars, less poundage on same, leaving the sum of Twenty-four Hundred Seventy-one and 70/100 ($2,471.70) Dollars, which sum I have deposited subject to the further order of Court."

10. What was done about the proceeds of this policy after the Company as garnishee thus paid it into the Pittsburgh Court, is wholly immaterial in this suit brought by Mrs. Dunlevy to collect it again, because she does not claim that she was not regularly served with process of summons in the suit of Boggs & Buhl against her in the Pittsburgh Court, nor does she claim that the judgment therein rendered against her was invalid or for any reason not binding. Hence when the Company

paid what it owed her into that Court, pursuant to said writ of Execution Attachment Sur. Judgment and Garnishment Process and said order of the Court, it paid it to her.

The judgment complained of is based solely on what the Pittsburgh Court did after the Company as garnishee discharged its obligation to Mrs. Dunlevy by paying the proceeds of the policy into Court, pursuant to proper legal process and the Court's order, to the credit of a cause to which she was a party as a judgment debtor. But for the convenience of the Court we here state what these things subsequently done were, at all times, however, denying that they have anything whatever to do with the Company's rights here, as follows,—

(*a*) The same day that the Court ordered the Company to pay the proceeds of the policy into Court in the *Dunlevy* case, the Court also made an order in that case that (p. 36) a "feigned issue" be made up and tried for the purpose of determining what the Court should do with the money thus paid into Court. Although this feigned issue was put upon a docket apparently kept in the Pittsburgh Court for the purpose of trying such questions as they arose in cases regularly pending in the Court, it was not an independent case but like any reference was in legal effect merely an inquiry in the case of *Boggs & Buhl v. Dunlevy* for the purpose of finding out to whom the money paid into Court in that case belonged, all the parties claiming the fund being in Court in that case, or assenting to the payment into Court in that case and to the Court's inquiry.

Boggs & Buhl and Mrs. Dunlevy were in Court in that case as parties thereto. Mr. Gould was in Court in that case as a garnishee and also assented to the inquiry and took part in it (pp. 41, 42 and 74). The Lincoln National Bank assented in writing to the payment of the money into Court in Boggs & Buhl against Dunlevy and intervened therein (p. 36), and so did Charles Elste (p. 95).

(*b*) May 3, 1910, the Court entered an order in the

case of *Boggs & Buhl v. Dunlevy*, stating how the issue therein was to be tried, as follows (p. 36),—

> "It is ordered that the issue to be tried in this case shall be as follows, to wit, whether Joseph W. Gould made a valid gift of policy No. 305,011 issued to him by the New York Life Insurance Co. to Effie J. Gould, now Effie J. Dunlevy. All attaching creditors of said Effie J. Dunlevy, who desire to intervene in this proceeding are required to do so as plaintiffs herein on fifteen (15) days' notice to the attys. of record, and to file their statements of claim or demand within said period of fifteen (15) days."

(*c*) The issue as to the right of the several claimants was tried September 19, 1910, and found in favor of Mrs. Dunlevy's father, the insured (p. 98). Mrs. Dunlevy did not appear. Thereafter the Court entered the following judgment in the case of *Boggs & Buhl v. Dunlevy* (p. 36),—

> "And now, Oct. 1, 1910, it is ordered, adjudged and decreed that Wm. B. Kirker, Pro., pay to Joseph W. Gould, or to his attorney, L. B. D. Reese, forthwith, the sum of $2,471, that being the amount received by said Prothonotary from the New York Life Insurance Company Mar. 21, 1910, less his poundage, viz., $8.70, by virtue of an order of this Court, date March 19, 1910, said money having been paid to said Prothonotary by said Insurance Company."

11. Mrs. Dunlevy commenced this suit in California to recover the proceeds of said policy January 14, 1910 (p. 4), after the Writ of Execution Attachment Sur. Judgment and Garnishment Process had been served as aforesaid in said Boggs & Buhl suit against her in Pittsburgh.

The Company answered in California April 1, 1910 (p. 19), in its answer alleging said judgment against Mrs. Dunlevy in said case of Boggs & Buhl against her at Pittsburgh, the service therein of said Writ of Execution Attachment Sur. Judgment and Garnishment Process, its answer to said writ, said order of the Court

directing it to pay, and its payment of, the proceeds of said policy into said Court in said cause. After the Pittsburgh Court, September 19, 1910 (p. 100), decided the issue in the *Boggs & Buhl* case as to the conflicting claims to the proceeds of the policy, the Company filed herein an Amended Answer (p. 19), and attached to and made a part thereof and put in evidence on the trial (*pp.* 24 *to* 111, *inclusive*), a duly certified transcript of the entire proceedings in the case of *Boggs & Buhl v. Dunlevy* in the Pittsburgh Court as its defence to this suit.

In deciding the case against the Company, the learned Trial Court, as well as the majority of the Circuit Court of Appeals, missed entirely the controlling point, namely, that by paying the proceeds of the policy into Court in Pittsburgh under the circumstance aforesaid, the Company paid it to Mrs. Dunlevy if it owed it to her. Passing by this, the Court dealt only with what the Pittsburgh Court did after the Company discharged its obligation by paying the proceeds of the policy into Court, and treating the issue framed in the *Boggs & Buhl* suit as to the right to the proceeds of the policy as an original suit, held that the judgment therein was not binding on Mrs. Dunlevy because she was not personally served with process of summons and did not appear.

Specifications of the Errors Relied Upon.

Your petitioner relies upon its several assignments of errors numbered respectively I, II, IV and VIII, as follows (p. 130),—

I.

The District Court above named for the Northern District of California, Second Division, erred in entering judgment in favor of plaintiff and against said defendant, New York Life Insurance Company, a corporation, upon the agreed facts.

II.

The said Court erred in entering judgment in favor of plaintiff and against the defendant, New York Life Insurance Company, a corporation, and the defendant, Joseph W. Gould, upon the agreed facts.

IV.

The decision was contrary to and against law, because said Court erred in making, giving, rendering and entering judgment in favor of plaintiff and against defendant, New York Life Insurance Company, and erred in failing to give, make, render and enter its judgment in favor of said defendant.

VIII.

Said Court erred in rendering judgment in favor of plaintiff and against said defendants, New York Life Insurance Company, a corporation, and Joseph W. Gould, because it appears from the undisputed facts of the case that on or about the 19th day of September, 1910, it was adjudicated by a Court of competent jurisdiction that plaintiff had no right, title or interest in and to the proceeds of said life insurance policy as more fully appears from Exhibit "A" to the amended answer to said New York Life Insurance Company on file herein."

BRIEF OF THE ARGUMENT.

I.

The Trial Court should have given the proceedings in the Pennsylvania Court the same faith and credit accorded them by law or usage in the courts of Pennsylvania.

Federal Constitution, Art. IV, Sec. 1.
Revised Statutes of the United States, Sec. 905.
Crapo v. Kelly, 16 *Wall.,* 610.
Hancock National Bank v. Farnum, 176 *U. S.,* 640.
Harris v. Balk, 198 *U. S.,* 215.
Converse v. Hamilton, 224 *U. S.,* 243.
Michigan Trust Co. v. Ferry, 228 *U. S.,* 346.

II.

The proceedings in the Pennsylvania Court were regular in every way and conformed to the law and usage of the courts of Pennsylvania.

In the absence of countervailing evidence, the Court will presume that the Pennsylvania Court proceeded regularly and in accordance with the law and usage of the Court, if it appears that the Court had jurisdiction of the subject matter and of the parties.

Wright v. Southern Railway Co., 141 *N. C.,* 164.

> "It is a strong thing for another tribunal to say that the local Court did not know its own business under its own laws."

Michigan Trust Co. v. Ferry, 228 *U. S.,* 346.

The record affirmatively shows that the Pennsylvania Court had jurisdiction in the Boggs & Buhl suit over both Mrs. Dunlevy and the Company, and proceeded in accordance with the law and usage of the Pennsylvania Courts, and this is not disputed in this record.

In the case of *Boggs & Buhl v. Dunlevy,* the plaintiff (p. 24) filed its Statement of Claim June 18, 1907, and the same date a Summons for the defendant was duly issued to the Sheriff, who returned it endorsed as follows (p. 34),—

> "Served the within writ June 24th, 1907, on Effie J. Dunlevy, defendant, by handing a true and attested copy thereof to an adult member of her family at her dwelling-house."

The laws of Pennsylvania provide for such service of Summons as follows,—

> "The writ of summons * * * may be served by the Sheriff of the county wherein it is issued upon an individual defendant * * * by handing a true and attested copy thereof to an adult member of his family at his dwelling-house."

Purdon's Digest, 236, *Sec.* 1.

The Summons cited Mrs. Dunlevy to appear and answer the first Monday in July, but she made default; and July 8 the Court (p. 24) entered "Judgment against defendant in default of appearance for $537.76."

This judgment conformed to the laws of Pennsylvania.

Purdon's Digest, 244, *Sec.* 42.

The Writ of Execution Attachment Sur. Judgment and the Garnishment Process against the Company issued in the case of *Boggs & Buhl v. Dunlevy* and served on the Company, are authorized by and conform to the laws of Pennsylvania.

Purdon's Digest, 1533, *Sec.* 48; 1712, *Sec.* 1; 263, *Sec.* 101.

November 1, 1909, the Sheriff duly served on the Company the Execution Attachment Sur. Judgment, the Garnishment Summons and the Interrogatories (p. 38). The effect of this service was that "all debts * * * belonging or due to defendant by the person or corporation upon which service shall be so made shall remain attached in the hands of such corporation or person in the manner heretofore practiced and allowed in a case of foreign attachment."

Purdon's Digest, 1538, *Sec.* 50.

The interpleader procedure was in accordance with the settled practice of the Pennsylvania Courts and with "the equitable principles of our common law."

Brownfield v. Cannon, 25 *Pa.*, 299.
Fish v. Keeney, 91 *Pa.*, 138.
McMunn v. Carothers, 4 *Clark*, 354.
Wasserman v. Bank, 3 *W. N. C.*, 475.
Wilbraham v. Horrocks, 14 *Phila.*, 191.
Troubat & Haly's Practice, *Vol.* 1, *Page* 270.

The Company's Petition for leave to pay into Court the money it owed Mrs. Dunlevy and which Boggs & Buhl, her judgment creditor, had attached in its hands, the order of the Court made on said petition, and the payment of the money into Court to the credit of the case of *Boggs & Buhl v. Dunlevy*, conform to the law and usage of the Pennsylvania Courts. In that State when funds in the hands of a garnishee are claimed by a third party, it is the settled practice to permit the garnishee to pay the money into Court and to award an issue between the rival claimants, the payment into Court discharging the garnishee and relieving it from further attendance.

Good v. Grant, 76 *Pa. St.*, 52.
Conshohocker Tube Co. v. Iron Car Co., 167 *Pa.*, 592.
Wilson v. Mayhew, 6 *Phila.*, 273.

Wasserman v. Bank, 3 *W. N. C.*, 475.
Hiller v. Good, 9 *Lanc. Bar.*, 129.
Fish v. Keeney, 91 *Pa.*, 138.
Wright v. McGarry, 2 *Chester*, 467.
Dever v. Rice, 19 *W. N. C.*, 156.
Rothchild v. Morrison, 9 *Lanc. L. Rev.*, 74.
Rodgers v. Santa Clause Co., 27 *W. N. C.*, 574.
Stockham v. Pancoast, 1 *D. R.*, 135.
Stern v. Jones, 7 *Kulp.*, 19.
Kistler v. Thompson, 3 *Lack. Jur.*, 341.
Gwinners' App., 50 *P. L. J.*, 421.
Wilbraham v. Horrocks, 14 *Phila.*, 191.

All the above are Pennsylvania decisions, but most of them are decisions of *nisi prius* Courts. Cases on this general subject have not many of them reached the Court of last resort in Pennsylvania apparently because the procedure which they illustrate and to which the procedure in this case conformed is so well-settled in that State that lawyers have not often thought of raising any question about it. So far as the Court of last resort in Pennsylvania is concerned, the above cited cases are the only decisions I have found bearing upon the question of the procedure in *Boggs & Buhl v. Dunlevy*. To the extent these Supreme Court decisions bear upon the issues in the present suit they are as follows,—

In *Good v. Grant*, 76 *Pa.*, 52, the head-note is as follows,—

> "Peter Dickinson borrowed $1,000 from Samuel Dickinson and conveyed to him land as security. William G. Grant & Son recovered judgment against Peter Dickinson in January, 1869. Samuel Dickinson afterwards conveyed the land to George S. Good, who, with Peter Dickinson's consent, gave notes to Samuel Dickinson for $1,100, part of the consideration. These notes being unpaid, William G. Grant & Son, alleging the money due by George S. Good belonged to Peter Dickin-

son, issued an attachment execution against Peter Dickinson making George S. Good garnishee; he paid the money into Court and pleaded '*Nulla Bona.*' Held, that by paying the money into Court George S. Good admitted he owed it; the contest was then between William G. Grant & Son and Samuel Dickinson, the issue should have been formed and tried between them and George S. Good relieved from further costs."

In the opinion the Court said,—

> "The contest then really was between the defendants in error as attaching creditors of Peter Dickinson as one party and Samuel Dickinson as the other party. The issue should have been formed and tried between them. *By paying the money into Court, Good admitted his liability to pay the judgments; although it is said the 'Court directed' him so to pay it in, we will not assume this direction to have been made without his request. The garnishee should then have been relieved from further costs.* The contest should have been carried on in form, as it was in fact, between the two parties claiming the fund."

In *Fish v. Keeney*, 91 *Pa.*, 138, the head note which correctly reflects the Court's decision, says,—

> "A feigned issue should be framed between the opposing claimants of the money so far as they are known to the Court. It was error to make a garnishee a party to the issue and subject him to the expense and costs, when he made no claim to the fund and was in no default."

Conshohocken Tube Co. v. Iron Car. Co., 167 *Pa.*, 539, was an appeal by garnishees from a judgment against them in favor of the attaching creditor where their answer admitted an indebtedness to which a third party claimed title. The Supreme Court held it was erroneous to enter a judgment against a garnishee in such case and that "the rule for judgment should be discharged and the title to the fund determined by an issue tried before a jury."

The decisions of the *nisi prius* Courts of Pennsylvania above cited illustrate the usage of those Courts in cases of this sort, and all are in accord with what was here done.

III.

By the law and usage of the Pennsylvania courts and every other court the company discharged its obligation to Mrs. Dunlevy when, pursuant to the writ served upon it and the order of the Court, it paid what it owed her into court to the credit of the cause to which she was a party and in court.

This is not merely a law and usage of the Pennsylvania Courts as the Pennsylvania cases already cited show, but it is a rule that obtains in every Court. "This is one of the decencies of civilization that no one would dispute. It applies to Article 4, §1, of the Constitution, *so that if a judicial proceeding is begun with jurisdiction over the person of the party concerned, it is within the power of a state to bind him by every subsequent order in the cause.*"

Michigan Trust Co. v. Ferry, 228 *U. S.*, 346.

When the Company paid the money into Court where she was it was just the same in legal effect as if it had paid it to her.

The service of the Writs of Attachment and Garnishment was equivalent to an assignment by Mrs. Dunlevy to Boggs & Buhl of her claim against the Company, and after the levy of the attachment Boggs & Buhl stood in her shoes. Hence by paying the money into Court pursuant to the Court's order, the Company discharged its obligation to Mrs. Dunlevy. This is the law of Pennsylvania.

Roig v. Tim, 103 *Pa. St.*, 115.

Reed v. Penrose's Executors, 2 *Grant*, 472.
Malvin v. Sweitzer, 1 *Kulp.*, 5.
Stover v. Stover, 3 *Del. Co. Rep.*, 290.
Wells v. Tuck, 1 *Kulp.*, 154.
Estate of Ficken, 16 *Phila. Rep.*, 269.

In *Roig v. Tim*, 103 *Pa. St.*, 115, the Court said,—

> *"The service of an attachment execution has the effect of an equitable assignment of the thing attached. It puts the garnishee in the relation to the attaching creditor which he had sustained to his former creditor."*

In *Reed v. Penrose's Executors*, 2 *Grant*, 472, the Court said,—

> "It may be premised that the effect of an attachment execution, served wherever it lies, is to place the attaching creditor in the same relation to the garnishee as that occupied by the debtor before the attachment was laid. *In re Baldwin's Estate*, 4 *Barr*, 248. The attachment is an equitable assignment of the thing attached; a substitution of the creditor for the debtor to the latter's rights against the garnishee."

In *Stover v. Stover*, 3 *Del. Co. Rep.*, 290, the Court said,—

> "Pending the attachment the rights of the parties are *sub judice* and the garnishee becomes a stakeholder of the thing attached. There is no method by which he can divest himself of this responsibility imposed by the statute other than to pay the money into Court or by obtaining a dissolution of the attachment * * *. The attaching creditor steps into the shoes of his debtor and becomes invested with all his rights; the attachment is in effect an assignment of the thing attached."

The Company did here precisely what the law and usage of the Pennsylvania Courts required it to do. Mrs. Dunlevy was in the Pennsylvania Court and was bound

by every order that Court made whether she remained within the jurisdiction of that Court after it got jurisdiction over her person or not.

Michigan Trust Co. v. Ferry, 228 *U. S.*, 346.

And when the Company, acting in obedience to an order of the Court which was binding on it and on her, paid into Court where she was what she claims it owed her and she neglected there to assert her rights, it discharged its obligation to her, and the Constitution and the law will not permit her to make it pay again by suing it in another jurisdiction.

IV.

The Court did not give the proceedings in the Pennsylvania court the same faith and credit accorded them by the law and usage of the courts of Pennsylvania. Hence it denied the company its constitutional rights and this judgment should be reversed.

Respectfully submitted,

EDWARD J. MCCUTCHEN,
Attorney for Petitioner.

WARREN OLNEY, JR.,
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Of Counsel.

28 October, 1915.

Supreme Court, U. S.
FILED
MAR 16 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 290.

NEW YORK LIFE INSURANCE COMPANY,
PETITIONER,

v.

EFFIE J. GOULD DUNLEVY, RESPONDENT.

MEMORANDUM OF CASES FOR RESPONDENT.

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NAT SCHMULOWITZ,
Counsel for Respondent.

(30734)

FILED
FEB 10 1916
JAMES D. MAHER
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1915
No. 290

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,
vs.
EFFIE J. GOULD DUNLEVY,
Respondent,

BRIEF FOR RESPONDENT.

FRANK W. TAFT,
CLARENCE CONNAN,
NAT SOMMERWITZ,
Attorneys for Respondent.

Filed this _____ *day of February, 1916.*

JAMES D. MAHER, Clerk.

By _____ *Deputy Clerk.*

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In the Supreme Court
OF THE
United States

October Term, 1915
No. 290

NEW YORK LIFE INSURANCE COMPANY,
Petitioner,

vs.

EFFIE J. GOULD DUNLEVY,
Respondent.

BRIEF FOR RESPONDENT.

Statement of the Case.

A restatement of the case by respondent is necessitated by misleading and erroneous statements of fact contained in the petitioner's brief. In answering and correcting the same the respondent will endeavor to parallel the arrangement contained in the petitioner's brief.

The question in the case is this: Has the Federal District Court for the Northern District of Cali-

fornia failed to give full faith and credit to the judicial proceedings of a sister state, when it rendered judgment to respondent in spite of an exemplified record of the State of Pennsylvania, set forth in petitioner's answer as a plea at bar?

The facts are as follows (note as stated before, respondent will parallel the arrangement of the petitioner's brief and comment upon the facts set forth under a corresponding number):

1. The statements contained in 1 of petitioner's brief are substantially correct.

2. The statements contained in 2 of petitioner's brief are correct.

3. The statements contained in 3 of petitioner's brief cannot be considered by this Court. They have been taken from an agreed statement as to what Joseph W. Gould would have testified if called as a witness in this case (p. 120). The Court cannot consider the purported testimony of Joseph W. Gould, inasmuch as the same has not been brought to its attention in the form of findings. The decision in the Circuit Court of Appeals in regard to this testimony determined that:

> "The record discloses no findings of facts either general or special in accordance with Sections 649-700 of the Revised Statutes, and no requests for instructions. In the absence of findings of the trial court inferences of fact to establish ultimate facts cannot be drawn by an Appellate Court from the testimony to be found in the record. Norris v. Jackson, 9 Wall. 125; W. L. Perkins Co. v. Von Baumbach, 185 Fed. 265; Streeter v. Sanitary Dist.

of Chicago, 133 Fed. 124; Anglo-American Land M. & A. Co. v. Lombard, 132 Fed. 721. * * * It follows that the stipulation as to the testimony which would have been given by Joseph W. Gould if called as a witness in the present case must be disregarded" (pp. 141 *et seq.*).

4. The statements contained in 4 of petitioner's brief are correct.

5. The statements contained in 5 of petitioner's brief are correct. One statement may be misleading. There is an inference in the clause "thereby admitting its indebtedness on account of said policy * * *" that the answer of petitioner to the garnishment was, that it was indebted to Effie J. Dunlevy. The answer did not disclose an indebtedness to Effie J. Dunlevy. It merely admitted that the Insurance Company owed either Mrs. Dunlevy or her father (pp. 44-47 inc.).

6. The statements in 6 of petitioner's brief are correct. However, it may be well to point out how the petition referred to therein, came to be filed. The petitioner was served with garnishment process in *Boggs & Buhl v. Dunlevy,* which process directed petitioner to withhold property of Effie J. Dunlevy. In its garnishment answer petitioner as the person garnished, stated it did not know if it had property of Effie J. Dunlevy. The property which Effie J. Dunlevy claimed, was also claimed by her father, Joseph W. Gould. Then petitioner petitioned for an interpleader between Effie J. Dunlevy and Joseph W. Gould. This interpleader could be

desired for only one purpose in view of the garnishment process served. The purpose was to see if the garnishment process withheld anything—that is whether the petitioner had property of Effie J. Dunlevy. The petition for interpleader therefore called for a reference of the question of ownership of property.

The petitioner also prayed to be allowed to pay the money into Court when it was decided who owned the indebtedness.

An order was made the same day granting the interpleader and allowing payment into Court when ownership of the indebtedness was ascertained. The order also directed that a copy thereof should be served personally on Effie J. Dunlevy in California.

7. The statement contained under number 7 is misleading. Effie J. Dunlevy was not "duly and personally" served with the order to show cause. The alleged process was a notice to Effie J. Dunlevy calling upon her to defend certain rights which she might have in an indebtedness of the petitioner. The alleged process was issued by the State of Pennsylvania on February 5, 1910, made returnable the 26th day of February, 1910, and served upon Effie J. Dunlevy in California, February 18, 1910. The statement "duly and personally served" assumes a factor which is in issue in this case and must be decided by this Court. The alleged process was served outside of the limits of the jurisdiction issuing it, was made returnable twenty-one days after issuance, and served eight days before the re-

turn date. Inasmuch as the alleged process called upon Effie J. Dunlevy and Joseph W. Gould to appear and prove their claims to an indebtedness of the petitioner, it is therefore an issue whether Mrs. Dunlevy was "duly and personally served".

The term "alleged" process has been used advisedly for we shall presently show that there was, in fact, no process at all served upon respondent.

The respondent here desires to call another fact to this Court's attention. In point of time, matters contained in 11 of petitioner's brief comes in at this place. The present action was commenced in California, January 14, 1910. The gist of the action was that the petitioner was indebted to respondent. In order to determine Joseph W. Gould's claim, he was made a party defendant and was served with summons in California, January 18, 1910 (p. 14).

The petitioner was served with summons and demurred February 16, 1910 (p. 11). Then, at the time Effie J. Dunlevy was served with the alleged process in a distant State in the proceedings which are the subject matter of the plea in bar, this action had been commenced in California and personal jurisdiction had of all parties claiming any interest in the subject matter, all having been served in the State of California.

8. The facts stated in petitioner's brief under number 8 are correct. However, the respondent desires to call to the Court's attention that the matters there set forth occurred after the California

Court had personal jurisdiction of all parties and that petitioner, neither at that time nor at any time, called the Pennsylvania Court's attention to this fact. Respondent desires further to call the Court's attention to the fact that the property in dispute between respondent and Joseph W. Gould was a debt which was only held in Pennsylvania by the garnishment process directed to and served on petitioner, if considered as property of Effie J. Dunlevy. Before this determination was made, as set forth under number 8 of petitioner's brief, petitioner with knowledge that it was in issue and with knowledge that the California Court had jurisdiction of all parties thereto, prayed to be allowed to convert the debt into money and pay the same into Court. This petition was granted by the Court.

Is the petitioner entitled to much consideration when it had its choice between a Court admittedly having jurisdiction over all the parties and a Court having doubtful jurisdiction and decided to pay the money into the latter Court?

9. The statements made in petitioner's brief under number 9 are correct.

10. The statements contained under number 10 of petitioner's brief are misleading.

The assumption contained in the first paragraph is not justified in view of this action and the position continually assumed by petitioner and the Courts of Pennsylvania. The petitioner has in this action assumed that it has never owed an indebtedness to Effie J. Dunlevy. The State of Penn-

sylvania has determined that the petitioner did not owe an indebtedness to Effie J. Dunlevy—and still petitioner, for the purpose of proving the proceedings of the Pennsylvania Court a plea in bar, assumes that it did owe an indebtedness to Effie J. Dunlevy. This assumption can not be made. The petitioner has defended with the proceeding of a sister State as a plea in bar. The proceeding determines that its garnishment process did not withhold any property of Mrs. Dunlevy. The petitioner cannot rely upon and at the same time repudiate the proceeding set up by it and maintain that it did withhold property of Mrs. Dunlevy.

The process of garnishment issued out of *Boggs & Buhl v. Dunlevy* and served upon the petitioner, was directed against Effie J. Dunlevy's property. The petitioner stated it had an indebtedness owing to either Effie J. Dunlevy or Joseph W. Gould. The interpleader action wherein a "feigned issue" was raised between Joseph W. Gould and Effie J. Dunlevy, though it did not have jurisdiction of the latter, rendered the garnishment process nugatory, for, by the judgment rendered therein it was determined that there was no property of Effie J. Dunlevy's in petitioner's hands. In other words the garnishment process, to be good, needed the factor of property of Mrs. Dunlevy's in petitioner's hands. A reference was made to determine this question. The reference determined that there was no such property. The whole situation is the same as if the Pennsylvania Court commanded petitioner to "retain all property of Effie J. Dun-

levy. However, on second thought we perceive you have no property of Effie J. Dunlevy. Consequently you can not comply with our demand".

(a) Under (a) of number 10 of petitioner's brief it is recognized that the "feigned issue" was but a reference to determine the effectiveness of the garnishment process, and if petitioner is logical we must conclude that the garnishment process was rendered nugatory by that reference.

In regard to the "reference", however, petitioner makes two statements which cannot go unexplained. The "reference" was for the purpose of ascertaining the ownership of a debt and thereby the effectiveness of the garnishment—not the ownership of a certain sum of money. Petitioners may answer the two are the same—but are they? Effie J. Dunlevy claimed an indebtedness, which was payable in the State of California, where she, assuming her to be the creditor, was to be found. Money is a physical object, while an indebtedness is intangible. Jurisdiction over money may be had where it is found. Jurisdiction of a debt, except in a case of valid garnishment is had where the creditor can be found. Petitioner took a sum of money from its pockets and said this is the property in issue, and requested a determination by the Pennsylvania Court.

The second misleading statement is that Effie J. Dunlevy was in Court in the garnishment proceedings. Nothing is offered to prove this. She was not in Court. She was in the State of California,

where she had been served personally with alleged process calling on her to contest a personal claim in Pennsylvania. This "reference" in which she was named as a party, but not served personally, has two phases, namely:

(1) As a determination of the effectiveness of the garnishment process.

(2) As a determination of Effie J. Dunlevy's and Joseph W. Gould's rights in the indebtedness of petitioner.

The first is dependent on the second. The garnishment process was determined by the judgment in the "feigned issue" that Effie J. Dunlevy did not own the property. The injustice of a determination of Mrs. Dunlevy's rights in no way affects the fact that the garnishment process was void. Whether rightly or wrongly determined the sovereign which commanded the restraint of Effie J. Dunlevy's property, determined she had no property and the garnishment therefore was rendered nugatory.

Pennoyer v. Neff, 95 U. S. 714.

But the determination of the second must be considered improper. Her rights were determined without personal service of summons on her within the State of Pennsylvania. Those proceedings determining she had no rights have in this case been offered as a plea in bar.

(b) Facts stated in (b) under number 10 of petitioner's brief are substantially correct subject to the explanation set forth above.

(c) Facts stated in (c) under number 10 are substantially correct subject to the explanation made above.

11. The statements set forth under number 11 of petitioner's brief are correct subject to statements made in 7 herein.

Restatement of the Facts.

Shorn of extraneous matters the facts are these:

A judgment was rendered against Effie J. Dunlevy in the action of *Boggs & Buhl v. Dunlevy.* Several years later a garnishment was issued out of that case against New York Life Insurance Company, as holding an indebtedness due Mrs. Dunlevy. The Insurance Company said either Mrs. Dunlevy or one Gould owned the indebtedness. A reference was made wherein alleged process was served on Mrs. Dunlevy in California. The reference held that there was no property of Mrs. Dunlevy's in the Insurance Company's hands. The indebtedness was paid to Gould.

In the meantime Mrs. Dunlevy commenced this action in California and the Court there obtained personal jurisdiction over Gould and the Insurance Company. The latter has plead in its answer the proceedings of the State of Pennsylvania.

Is this record of proceedings in Pennsylvania a good plea in bar?

Brief of Argument.

In order to prove that the exemplified record of Pennsylvania proceedings attached to the answer herein, has been given full faith and credit by the trial Court and does not constitute a plea in bar, the respondent contends as follows:

1. That the exemplified record of the Pennsylvania proceedings is not *res adjudicata* of any fact, as no judgment has been rendered or entered therein.

2. That if judgment had been rendered in the Pennsylvania proceedings, the proceedings would not have been *res adjudicata* of any fact, as regards respondent.

3. That if judgment had been rendered in the Pennsylvania proceedings, no fact would have been *res adjudicata* against respondent, as the record of the proceedings discloses neither jurisdiction *in personam* or *in rem*.

4. That the argument of the petitioner is without merit.

I.

THE EXEMPLIFIED RECORD OF THE PENNSYLVANIA PROCEEDINGS IS NOT RES ADJUDICATA OF ANY FACT, AS NO JUDGMENT HAS BEEN RENDERED OR ENTERED THEREIN.

The petitioner has contended that the full faith and credit clause of the Constitution required the District Court to grant to the Pennsylvania pro-

ceedings the same consideration that a Pennsylvania Court would have granted it in a like situation. This principle of law is conceded. What would the Pennsylvania Court have done if there was set up as a plea in bar, a proceeding which disclosed a verdict but no judgment?

The facts are, as assumed in the question. There is a verdict, contained in the proceedings (p. 110). *There is no judgment.*

The Supreme Court of Pennsylvania has determined that where a proceeding discloses a verdict and no judgment it is not *res adjudicata* and is not a plea in bar.

Dougherty v. Lehigh C. & N. Co., 52 Atl. 18 (Pa.);

Bennet Water Co. v. Burgess of Millvale, 50 Atl. 155 (Pa.);

Middleton Mfg. Co. v. Phila. R. R. Co., 22 Atl. 747, 748 (Pa.).

In the first case cited, *Dougherty v. Lehigh C. & N. Co.*, 52 Atl. 18, the situation presented was a proceeding which, like the one under consideration, had gone to verdict but not to judgment. In discussing the law the Court says:

> "The offer of the record in the suit of March term, 1900, No. 209, was made, as was stated in the Court below as well as here, for the purpose of showing that the claim of the appellant to the money in the hands of the Lehigh Coal & Navigation Company was *res adjudicata*, the verdict in her favor being, as contended, a bar to the plaintiff's right to recover in this suit. The offer was disallowed for no reason given

by the Court at the time, but in his opinion refusing a new trial it is evident that it was excluded by the learned judge because the suit was between other parties, and for the still better reason that there had been no judgment on the verdict. For this latter reason we sustain the Court's ruling. If judgment had been entered on it, it would have been conclusive upon the parties to the issue in which it was rendered of what the jury had found; but with no judgment on it, it was inadmissible. Whart. Ev. s. 781; Black. Judgm. s. 506; Middletown Mfg. Co. v. Philadelphia R. R. Co., 145 Pa. 187, 22 Atl. 747, 748. 'No question becomes *res adjudicata* until it is settled by a final judgment. For this reason the verdict of a jury is not admissible as evidence to create an estoppel before it has received the sanction of the Court by passing into a judgment. Until then it is liable to be made nugatory by an order arresting judgment or granting a new trial' (Freem. Judgm. s. 251)."

II.

IF JUDGMENT HAD BEEN RENDERED IN THE PENNSYLVANIA PROCEEDINGS, THE PROCEEDINGS WOULD NOT HAVE BEEN RES ADJUDICATA OF ANY FACT AS REGARDS THE RESPONDENT.

Petitioner, the New York Life Insurance Company, had been served with garnishment process, directed against Mrs. Dunlevy's property. It answered disclosing an indebtedness to which there was a claimant, Joseph W. Gould, stated that it did not know the owner thereof, and asked for a rule of interpleader. This was granted, and alleged process was served on Mrs. Dunlevy in Cali-

fornia. The issue presented by the rule of interpleader was to "ascertain to which of said parties the money in the hands of the New York Life Insurance Company belongs" (p. 70). Correctly, the issue was not to whom certain money belonged, but to whom the Insurance Company's indebtedness belonged. Later the Insurance Company, under no stipulation thereto by respondent, paid into Court a certain sum of money, equal to the indebtedness referred to above. The issue was framed, a so-called trial was had, and verdict was rendered thereon in favor of Joseph W. Gould. Though no judgment was rendered thereon, no point is made of that fact under this topic.

Assuming therefore that judgment was rendered in the Pennsylvania proceedings and that therefore certain facts became *res adjudicata* in the Pennsylvania Court, the question arises, what are these facts?

Only two possible facts could have been determined, as only two facts were placed in issue: the Insurance Company questioned its indebtedness to Mrs. Dunlevy; this question depended upon the issue of ownership of the debt. There were then only these two possible issues; first whether the Insurance Company was indebted; second, whether Mrs. Dunlevy owned the indebtedness. This being so, the judgment, assuming one was rendered and entered, adjudicated:

(1) That the Insurance Company as garnishee was not indebted to Mrs. Dunlevy, the judgment debtor.

(2) That Mrs. Dunlevy was not the owner of the indebtedness.

The first of the adjudications offered as a plea in bar, presents a situation where a garnishee is setting up a defense of *res adjudicata* to an action by his creditor, the judgment debtor in the action out of which the garnishment issued. Restated in the present case, the situation presented is this: the Insurance Company having been discharged as garnishee in the action of *Boggs & Buhl v. Dunlevy* is setting up that discharge as *res adjudicata* in an action by Mrs. Dunlevy against the Insurance Company. However, it is not the law that a discharge to a garnishee is *res adjudicata* in an action by the judgment debtor against the garnishee.

In *20 Cyc.* 1149 the law applicable is stated in the following words:

> "The effect of a judgment in favor of the garnishee is to discharge him from liability in the garnishment proceeding but is not a bar to an action against him by the principal defendant for the same debt or demand, nor is it a bar to a recovery by another creditor of the same defendant."

Finch v. Alexander County Nat. Bank, 65 Ill. App. 337;

Hukill v. Yoder, 29 Pittsb. Leg. T. (Pa.) 94;

Hilliard v. Burlington Shoe Co., 76 Vt. 57, 56 Atl. 283;

Laport v. Bacon, 48 Vt. 176;

Hamilton Nat. Bank v. Horton, 63 N. H. 234, 44 Atl. 296;

Lewis v. Tanes, 4 Phila. (Pa.) 276.

To the same effect see

Cummings v. Edwards, Wood & Co., 103 N. W. 709; 106 N. W. 304.

Shinn on Attachments and Garnishments, states the rule of law in these words (section 725):

> "On the principle last above stated that the judgment entered in a garnishment suit is not *res adjudicata* between the garnishee and the principal defendant except as to the amount admitted by the garnishee and determined by the Court to be due, a judgment discharging the garnishee may not be shown by him as a fact in defense of an action thereafter brought against him by such principal defendant or his assignee on the same demand. Such judgment is only decisive of the garnishment, plaintiff's right to require payment of the garnishee and the defendant or his assignee may thereafter proceed in an action in law against the person that was proceeded against in garnishment in the same matter and to the same effect as though no such garnishment proceedings had ever been instituted."
>
> (Citing *Webster v. Adams,* 58 Me. 317;
>
> *Puffer v. Graves,* 26 N. H. 256;
>
> *Ruff v. Ruff,* 85 Pa. St. 333.)

One of the cases referred to above is of particular weight as an authority, because it was decided in the State of Pennsylvania. The facts in that case are as follows:

One M. Ruff executed and delivered his note in a certain sum to C. P. Ruff, who assigned the same to Hillis. Prior to the assignment one Barclay secured a judgment against C. P. Ruff and had garnishment process issued, directed to, and served on M. Ruff as garnishee. Trial upon the garnishment resulted in a verdict for M. Ruff. In the action by Hillis, assignee of C. P. Ruff against M. Ruff on the note, M. Ruff set up the judgment rendered in the garnishment trial as *res adjudicata.*

The Court held:

> "The one question for us to resolve is, was C. P. Ruff by reason of his having been served with the writ of attachment such part or privy to this issue as would make the judgment therein binding on him. * * * But if he was such a party then should he have been included in the issue and the jury should also have been sworn as to him? This, however, was not done, and why not? The answer is because he had no standing as a party against the garnishee and was therefore properly excluded from a participation in the trial. If he had aught to say against the judgment from which the attachment issued he might have pleaded and had issue; it is that he might have such opportunity that the Act of Assembly directs that notice be given the debtor if he is in the county. With such trial, however, the garnishee has no concern, neither is prerequisite to a trial against him. * * * It is thus apparent that the two issues are quite distinct and that whilst in the latter the garnishee has no interest, in the former the debtor has none. * * *
>
> What shall we say then; that the debtor is concluded by the result of an issue in which he has no interest; from which by legal rule he is included, in which he cannot be heard ex-

> cept as a witness, and which does not conclude his creditors? * * * If one is to be concluded by a judgment he must have his day in Court, some say in and control over the trial. But C. P. Ruff had neither control over nor say in the issue between Barclay and the garnishee. Barclay might have permitted the case to go by default; he might have discontinued it or he and the garnishee might have compromised and C. P. Ruff could not have intervened to prevent either. He was literally barred out of the case and for the sufficient reason that he was no party to it. However, by all rules he is not concluded by the judgment resulting from the trial."

The second matter which was possibly adjudicated by the Pennsylvania proceedings was that Joseph W. Gould was the owner of the indebtedness. However, this determination of the rights of Mrs. Dunlevy was determined without personal service on Mrs. Dunlevy, she being served in the State of California with alleged process (p. 77) and having never appeared.

A determination of personal rights without jurisdiction *in personam* is ineffectual.

> *Pennoyer v. Neff*, 95 U. S. 714;
> *Dull v. Blackman*, 169 U. S. 243, 42 L. ed. 733.

From the preceding argument it is apparent that only two matters could possibly have been adjudicated by the Pennsylvania proceedings, and that neither of these matters constitute *res adjudicata* to the claim of respondent. Any other matters not necessary to the judgment, matters without

which the judgment could have been pronounced, are not *res adjudicata* for any purpose.

Thorman v. Frame, 176 U. S. 350, 44 L. ed. 500.

The foregoing contentions necessarily assume that the Pennsylvania Court had jurisdiction over respondent and we shall presently show that not only did it not have jurisdiction over respondent, but that the proceedings themselves are materially defective.

III.

IF JUDGMENT HAD BEEN RENDERED AND ENTERED IN THE PENNSYLVANIA PROCEEDINGS, NO FACT WOULD HAVE BEEN RES ADJUDICATA AS AGAINST RESPONDENT BECAUSE THE RECORD OF THE PROCEEDINGS DISCLOSES NEITHER JURISDICTION IN PERSONAM NOR IN REM.

The full faith and credit clause of the Constitution does not preclude inquiry into the jurisdiction of the Court in which the judgment is rendered, over the subject matter, the parties affected by it, nor the facts necessary to give jurisdiction.

Thorman v. Frame, 176 U. S. 350, 42 L. ed. 50, and cases cited.

A thorough exposition of the proposition of this topic is contained in the opinion of the Circuit Court of Appeals, Ninth District, rendered in deciding this case. The opinion reads as follows (214 Fed. 6):

> "It is contended that the plaintiff's cause of action is barred by the proceedings in the

court of Pennsylvania, which are pleaded in the amended answer. In 1907, while the plaintiff was a resident of the state of Pennsylvania, Boggs & Buhl recovered judgment against her for a debt, in a court of that state. Some two years later execution was issued upon the judgment, and Joseph W. Gould and the local agent of the defendant were garnished. The defendant in answering the writ set forth the fact of the issuance of the policy and the assignment thereof, and alleged that Gould claimed to be the owner thereof. Gould answered, claiming that the policy and all rights thereunder belonged to him. At that time the plaintiff had become a resident of the state of California. The statutes of Pennsylvania provide that when the sheriff is notified that the property which he has levied upon belongs to a person other than the defendant in the execution process, he shall enter a rule in the court, out of which the execution or process issued on the claimant, to show cause why an issue should not be framed to determine the ownership, and that notice of the rule shall be given to the plaintiff, the defendant and the claimant. 2 Purdon's Digest (13th ed.) p. 1551. On February 5, 1910, on the petition of the garnishee, a rule was granted on the plaintiff and the defendant in the execution, and also upon Joseph W. Gould, the claimant, to show cause why they should not interplead, and why the insurance company should not be permitted, when it was determined to whom the money ought to be paid, to pay the same into court for the benefit of the person entitled to receive the same, and that service of a copy of the rule, petition, and the order be made upon Mrs. Dunlevy by serving her personally at her residence in California. The rule was made returnable February 26, 1910. It appears by an affidavit that on February 18, 1910, personal

service was made upon her, in San Francisco. The papers served upon her were a copy of the petition of the insurance company, a notice of its attorneys, and a copy of the order of the court of date February 5, 1910, reciting that a rule was granted on Effie J. Dunlevy, Joseph W. Gould, and Boggs & Buhl, to show cause why they should not interplead together, for the purpose of ascertaining to which of the parties the money in the hands of the insurance company belonged, and the order recites:

'And it appearing that Effie J. Dunlevy is a resident of the State of California it is hereby ordered and decreed that service of said rule upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of same by mail, or registered mail, to her at her last known address. Rule returnable the 26th day of February, 1910.'

The only attestation of the order are the words appended thereto, 'By the Court'. Mrs. Dunlevy made no appearance in the proceeding, and on May 3d an order of the court was made framing the issue, which was whether Joseph W. Gould made a valid gift of the policy to Effie J. Dunlevy. While the insurance company expressed its willingness to pay the money into court, it was not actually paid into court until March 19, 1910. On September 19, 1910, a jury returned a verdict in the cause entitled Boggs & Buhl, A. J. Gould, and Lincoln National Bank, Intervenors, v. Joseph W. Gould, as follows: 'We, the jurors, impaneled in the above entitled case, find a verdict for the defendant.' No judgment was ever entered upon the verdict of the jury, but upon October 1, 1910, the court ordered that the money be paid to Joseph W. Gould. Counsel for plaintiff contend that the service of the rule to show cause and the other papers was ineffectual to

require the plaintiff's appearance on these proceedings, and that the court never acquired jurisdiction of her. Where the object of an action is to determine personal rights only, and the proceeding is merely in personam, constructive service on a non-resident 'is ineffectual for any purpose'. Dull v. Blackman, 169 U. S. 243, 18 Sup. Ct. 333, 42 L. ed. 733. But assuming that the proceeding in the court of Pennsylvania was a proceeding *quasi in rem*, the object of which was to determine to whom belonged the money that has been seized under the writ of the court, and that the money owing by the insurance company, notwithstanding that it had not been paid into court when the rule to show cause was made, was in legal effect in possession of the court and subject to its judgment, we have to inquire whether the service was made in accordance with the laws of the state. The law to which we must refer is found in the act of April 6, 1859, 2 Purdon's Digest (13th ed.) 1422, which provides that it shall be lawful for any court of Pennsylvania having equity jurisdiction of any suit concerning goods, chattels, etc., or liens, mortgages, on incumbrances thereon, or where any court has acquired jurisdiction of the subject-matter by service of its process on one or more of the principal defendants, to order and direct that any subpoena or other process in such suit may be served upon any defendant then residing out of the jurisdiction of the court, and upon affidavit of such service to proceed as fully and effectually as if the same had been made within the jurisdiction of the court. But the statute expressly provides that—'such order limit a time, depending on the place where such process is to be served, after the service thereof, within which compliance with the requirements thereof must be made by such defendant or defendants; such process to be returnable at

such time after the service thereof, as such court shall, by special order, direct'.

The proceedings in the case under consideration fail in several respects to comply with these provisions of the statute. But the most vital defect is that the order wholly fails to limit a time, after the service thereof, within which compliance with the requirements thereof must be made, or to direct by 'special order' that the process be returnable at a stated time after the service thereof. The order which was served upon Mrs. Dunlevy was returnable in the court of a distant state within eight days after the service upon her, while if she had been a resident of that state and served therein, she could not, under the state law, have been required to appear and plead until 10 days after the date of the service. 1 Purd. Dig. (13th ed.) p. 244. No default was taken against her, and nowhere in the proceedings of that court is there a recital or finding that service had been made upon her. The records show that from and after the return of the service upon her of the order to show cause, she was ignored in the proceedings. Substituted service upon a non-resident defendant being of statutory origin, the law must be strictly complied with (Jennings v. Johnson, 148 Fed. 337, 78 C. C. A. 329), and where the service is so defective as not to confer jurisdiction on the court, the judgment is open to collateral attack. Johnson v. Hunter, 147 Fed. 133, 77 C. C. A. 359; Guaranty Trust Co. v. Green Cove Railroad, 139 U. S. 137, 11 Sup. Ct. 512, 35 L. ed. 116; Noble v. Union River Logging Railroad, 147 U. S. 165, 173, 13 Sup. Ct. 271, 37 L. ed. 123. In Amy v. Watertown No. 1, 130 U. S. 301, 316, 9 Sup. Ct. 530, 536 (32 L. ed. 946), the court said:

'The cases are numerous which decide that where a particular method of serving process

> is pointed out by statute, that method must be followed.'
>
> And on page 317 of 130 U. S. on page 536 of 9 Sup. Ct. (32 L. ed. 946) the court quoted with approval the following language of the Supreme Court of Wisconsin:
>
> 'When the statute prescribes a particular mode of service, that mode must be followed. *'Ita lex scripta est.'* There is no chance to speculate whether some other mode will not answer as well. This has been too often held by this court to require further citations'."

To the foregoing quotation we desire to add the following additional reasons which show conclusively that the Pennsylvania proceedings were defective.

1. Under the Act of April 6, 1859, *2 Purdon's Digest* (13th ed.), 1422, we contend that a non-resident must be served with process. The only papers served upon respondent were a notice to Mrs. Dunlevy by the attorneys for the New York Life Insurance Company for the granting of the rule to show cause, a copy of the petition of the New York Life Insurance Company for the rule, and a copy of the order of the Court granting the petition of the New York Life Insurance Company by ordering the rule granted served upon Effie J. Dunlevy, Joseph W. Gould and Boggs and Buhl, and ordering, in particular, that service of said rule "upon Effie J. Dunlevy be by serving her personally with a copy of this petition and order, or by sending a copy of the same by mail or registered mail to her at her last known address."

The portion of the order just quoted does not conform with the statute, for under the statute considered under this subdivision, not only must a copy of the order authorizing the service be served upon a defendant, but also a copy of the bill or petition for such process by "a subpoena thereon, but if not, a statement of the substance and object of the proceeding whereon the same is founded."

In other words, under this statute, the following papers must be served upon a defendant out of the jurisdiction of Pennsylvania:

1st. Process of some character, being a writ in the form of either a summons or a subpoena, directing them to appear within a certain time and answer to the merits of a particular cause of action;

2nd. A copy of the order authorizing the service of the process;

3rd. If the subpoena is the process, then there must be, in addition, a copy of the bill or petition; or

4th. If a subpoena is not the process, then a statement of the substance and object of the proceeding.

In the case at bar, the petitioner proceeded evidently upon the theory that a subpoena would be the proper process for they served upon Mrs. Dunlevy a copy of the order authorizing the service, a copy of the bill or petition, but there was no process served, and this therefore renders the pro-

ceeding entirely defective. That process should be distinguished from the order authorizing it is evident from the language of the statute, which reads as follows:

> "And further provided that when such process shall be served, such defendant or defendants shall *also* be served with a copy of the order authorizing the service thereof, etc." (Italics ours.)

2. The law of Pennsylvania calls upon the claimant to accept the burden of proof.

Gallagher v. Davis, 179 Pa. St. 504, 36 Atl. 319;

2 Purdon's Digest (13th ed.), p. 1555.

In the proceedings in this case the claimant, Joseph W. Gould, is made defendant and thereby he was not made to accept the burden of proof.

3. No bond was ever filed by or required of Joseph W. Gould as provided for under the laws of Pennsylvania.

2 Purdon's Digest (13th ed.), p. 1553.

4. The sheriff did not enter the rule as required by the laws of Pennsylvania.

2 Purdon's Digest (13th ed.), p. 1551.

5. Respondent was not allowed 15 days after notice of the rule within which to file her affidavit as provided for under the laws of Pennsylvania.

2 Purdon's Digest (13th ed.), p. 1555.

6. No motion was ever made by Joseph W. Gould for, nor did the Court order, a *judgment*

entered against respondent for failing to file the affidavit required by law.

2 Purdon's Digest (13th ed.), p. 1555.

In conclusion to this topic we desire to point out that only in two ways could the Pennsylvania Court have acquired jurisdiction, that is either *in personam* or *in rem*. It did not acquire jurisdiction *in personam* because Mrs. Dunlevy was not served with process within the State of Pennsylvania. It did not gain jurisdiction *in rem*, because 1st, the Court itself determined that it withheld no property of Mrs. Dunlevy's; and, 2nd the procedure to gain jurisdiction *quasi in rem* was not complied with nor followed.

IV.

REPLY TO PETITIONER'S ARGUMENT.

A. *The proceedings of the Pennsylvania Court were not regular and did not conform to the law and usage of the Courts of Pennsylvania as contended in Topic II of Petitioner's Brief.*

This has been discussed under the preceding Topic.

On page 13 of petitioner's brief, third paragraph thereof, the Insurance Company repudiates the proceedings which it has offered as a plea in bar. The proceeding, if it determines anything, determines that the company was not indebted to Mrs. Dunlevy, that the company was discharged and that

the garnishment process was ineffective, as it could not restrain any property of Mrs. Dunlevy, because, under the garnishment proceedings, she had none in the company's hands.

Considering the facts, misstated in the topic, as correct, still it appears that the Pennsylvania proceedings did not conform to law and usage of Pennsylvania. In particular it appears:

1. That no judgment was ever rendered or entered in the proceedings relied on.

2. That the rule of interpleader had no time noted therein within which Mrs. Dunlevy was to comply with its commands (p. 44).

3. That Mrs. Dunlevy was served in California, with alleged process eight days before the return date thereof when, if served in Pennsylvania, the date thereof would have had to be at least ten or fifteen days prior to the return date.

4. That petitioner at no time disclosed the present action and the jurisdiction herein of all parties in the California Courts, to the Pennsylvania Court (pp. 11, 14).

5. That the burden of proof was not placed on claimant (p. 96).

6. That in fact, no process was ever issued or served upon respondent in the feigned issue proceedings.

7. That no special order was ever made directing when the process, assuming that it was issued, was to be returnable *after* the service thereof.

8. That the rule on interpleader was not entered by the sheriff as required by law.

9. As a corollary to No. 8 hereof, the rule entered by petitioner was not authorized by statute but may be, for purposes of argument, considered a common law right.

10. That no bond was ever required of Joseph W. Gould, the claimant.

B. *By the law and usage of the Pennsylvania Courts the Insurance Company did not, as contended in Topic III of the petitioner's brief, discharge its obligation to Mrs. Dunlevy, when pursuant to the writ served upon it and the order of the Court, it paid what it owed her into Court to the credit of the cause to which she was not a party and not in Court.*

This conclusion is erroneous in two particulars. First, that a determination of an issue raised by interpleader, after garnishment, as in this case, is a continuation of the judicial proceedings in which a judgment was rendered against the judgment debtor, Mrs. Dunlevy; second, assuming that jurisdiction does continue, that the order in question i. e. payment into Court, would bind Mrs. Dunlevy.

To take up the first erroneous phase of the conclusion. The garnishment issue as to the ownership of the debt owed by the Insurance Company was not a part of the original action of *Boggs & Buhl v. Dunlevy* to the extent that the jurisdiction

acquired in that cause extended to the garnishment issue.

Ruff v. Ruff, 85 Pa. St. 333.

Moreover it has always been the accepted theory that jurisdiction in a garnishment matter depended upon an *effective process* served upon the garnishee wherever found, not upon a continued jurisdiction over the principal defendant.

Harris v. Balk, 198 U. S. 215, 49 L. ed. 10;
Louisville & N. R. Co. v. Deer, 200 U. S. 176; 50 L. ed. 426.

At this point it is advisable to call the Court's attention to the fact that in the original action of *Boggs & Buhl v. Dunlevy,* the defendant was served constructively (p. 34). It does not appear affirmatively from the record that said defendant was at the time of the constructive service a resident of Pennsylvania nor does there appear affirmatively any basis for such constructive or substituted service. This would ordinarily render the judgment itself void.

Pennoyer v. Neff, 95 U. S. 714.

But assuming that Mrs. Dunlevy was properly served in the first instance, the Court merely had jurisdiction over her for the purpose of rendering a judgment against her by default, or if she had appeared, the Court would have had jurisdiction over her for the purpose of hearing the case upon its merits.

Not having appeared and a judgment having been taken by default, the jurisdiction of the Court over Mrs. Dunlevy came to an end with the entry of the default judgment.

Let us assume that Mrs. Dunlevy was living in Pennsylvania after the judgment had been entered and that she had property in her possession which could have been subjected to the payment of the judgment. In order to have compelled her to do so it would have been necessary to have served her with some process by which she would have been compelled to have appeared in Court and turned over to the sheriff the property which she had in payment of the judgment outstanding against her. She, however, being out of the jurisdiction of the State of Pennsylvania, process of this character was not available.

Now, then, let us assume that the New York Life Insurance Company in Pennsylvania had property belonging to the judgment debtor. It is unquestionably true, that if there had been no question but what the moneys or the debt under the control of the New York Life Insurance Company belonged to Mrs. Dunlevy that no further jurisdiction over the person of Mrs. Dunlevy would have been necessary and that upon service of the writ of execution attachment on the New York Life Insurance Company, jurisdiction over Mrs. Dunlevy would have been acquired by virtue of the jurisdiction which the Court had over the *res* belonging to her. However, in the execution attachment, the New York

Life Insurance Company did not admit its liability to Mrs. Dunlevy and therefore it was not apparent by this denial of liability that Mrs. Dunlevy had property in the State of Pennsylvania.

These facts, considered together with the fact that Mr. Gould later appeared, and claimed title to the moneys in the possession of petitioner, and that the title to these moneys was afterwards tried by the Court, show rather conclusively that while the trial of title to the fund, which has been termed the "feigned issue," was precipitated by the judgment obtained against Mrs. Dunlevy in favor of Boggs & Buhl, at the same time it is obviously such a collateral proceeding or such an independent proceeding that it is indeed a stretch of imagination to state that having acquired jurisdiction over Mrs. Dunlevy solely for the purpose of rendering and satisfying a judgment against her on a claim of goods sold and delivered, that thereby the Court had also acquired jurisdiction for the purpose of trying her title to any property in which she might have an interest in the State of Pennsylvania, which property might be subjected to the payment of said judgment.

To take up the second erroneous phase of the conclusion: Assuming that the jurisdiction acquired over Mrs. Dunlevy in *Boggs & Buhl v. Dunlevy* did extend to the garnishment issue, nevertheless the payment into Court was not of such a nature as to bind Mrs. Dunlevy.

Giving to the Pennsylvania proceedings their fullest effect as a part and parcel of *Boggs & Buhl v. Dunlevy* it is discovered that the garnishment proceeding determined that the garnishment process issued in *Boggs & Buhl v. Dunlevy* was ineffective because the reference growing out of the garnishment was to discover if any property of the judgment debtor was in the hands of the garnishee, and did discover that there was none. Consequently, to hold Mrs. Dunlevy to the garnishment proceedings would be to determine that the Insurance Company was discharged as garnishee of her property, and consequently any payment into Court by it, under that ineffective garnishment could not be a payment of her property, but the property of someone else. Therefore, binding Mrs. Dunlevy to the garnishment proceeding, the petitioner discovers as his goal, that no property of Mrs. Dunlevy was garnished, and no money belonging to her was paid into Court.

In addition, we desire to call the Court's attention to the fact that the payment into Court was an *ex parte* proceeding. No service of the petition to that end upon, nor any consent thereto by respondent is claimed or set forth. The matter therefore, under no condition could be a matter demanding credit in a sister state.

Thorman v. Frame, 176 U. S. 350, 44 L. ed. 500.

In this Topic III petitioner relies quite confidently upon the United States Supreme Court decision

of *Michigan Trust Co. v. Ferry,* 228 U. S. 346; 57 L. ed. 867. The question presented here, however, falls short of the case relied upon. Petitioner is attempting here to sustain the Pennsylvania proceedings when it is apparent that no judgment of any character had been ever entered, and that they are defective for other reasons. These Pennsylvania proceedings would have no standing in the Pennsylvania courts (see Topic I). The Michigan proceedings introduced in the Utah courts were complete, a judgment had been rendered and it could have been acted upon in the Michigan courts.

Moreover, as pointed out above, the garnishment part of the Pennsylvania proceedings are not a part of the main action. A discharge of a garnishee is not a defense to an action by the judgment debtor against the garnishee (*Ruff v. Ruff,* supra). And further, even enforcing the garnishment proceedings upon Mrs. Dunlevy, their effect is only that the garnishee was discharged and the money paid by the garnishee was not her money. It could not adjudicate Mrs. Dunlevy's rights to the ownership of property because the Court itself determines it has no jurisdiction *in rem* or *quasi in rem,* and further because of the fact that no personal or constructive service was had on Mrs. Dunlevy in the feigned issue.

The other decisions cited in Topic III are from the Pennsylvania courts. They are all based upon situations of facts assumed in the topic but not found in the Pennsylvania proceedings offered as

a plea in bar. The cases all depend upon a finding of the payment into Court of Mrs. Dunlevy's property. The garnishment proceedings introduced as a plea in bar determines that it was not Mrs. Dunlevy's property.

In paragraph 3 under Topic III petitioner states that the payment into Court was equivalent to an assignment by Mrs. Dunlevy to Boggs & Buhl. But there was no property of Mrs. Dunlevy to assign. Boggs & Buhl received no fruits of that payment. By the proceedings, the fund was held not to be the property of Mrs. Dunlevy and consequently Boggs & Buhl as the judgment creditors who garnisheed, received nothing.

The situation would be different if the petitioner (after an inspection of the record in the case of *Boggs & Buhl v. Dunlevy* had found a valid judgment based upon a valid service of summons) had paid and satisfied the judgment in the case of *Boggs & Buhl v. Dunlevy* and claimed the amount so paid as a credit on the indebtedness owing Effie J. Dunlevy. But they have not done so. The creditor's judgment has not been paid, and although the Federal Courts of California have squarely decided on the question of ownership, in favor of Effie J. Dunlevy, if petitioner prevails before this Court, she will not receive her property and the judgment of Boggs & Buhl against her will still be an existing obligation.

No more complete method could be devised of depriving a person of property through the chan-

nels of the courts after the only Court having jurisdiction of all the parties had decided the litigation in favor of the respondent.

If the judgment in the case of *Boggs & Buhl v. Dunlevy* was a horse good enough to carry the money into Court for the petitioners, they should feed the animal when they arrive at their destination and not be permitted to turn the beast out to starve.

It might be said that by the terms of the insurance policy that the money was payable in a lump sum only and that the demand could not be split. There is nothing more sacred about an obligation due on an insurance policy than there is about any other debt, and if they had been compelled to pay the amount of the judgment debt there is no warrant of law for paying the remainder of the debt into a foreign Court and leave the creditor to his own resources to secure the money if he can.

Obligations cannot be discharged in that manner.

Conclusion.

In conclusion the respondent desires again to call to this Court's attention that full faith and credit has been given to the record of the Pennsylvania proceedings offered as a plea in bar, but that it does not conclude the respondent because:

1. The proceedings disclose that no judgment has been rendered or entered and that fact by the law of Pennsylvania precludes the proceeding being *res adjudicata* in any Court.

2. The Pennsylvania proceedings could be *res adjudicata* upon but two issues; the question of property of the judgment debtor being in the hands of the garnishee, and the question of ownership of a certain indebtedness; the determination in the Pennsylvania proceedings that there was no property of the judgment debtor in the hands of the garnishee, is not *res adjudicata* in an action in Pennsylvania by the judgment debtor against the garnishee; the determination of the ownership of the property was without jurisdiction of a claimant thereto and therefore not *res adjudicata* as to that claimant.

3. The Pennsylvania Courts did not acquire jurisdiction *in rem* or *quasi in rem* because the procedure of that state to acquire such jurisdiction was not complied with, and the subject matter of such jurisdiction (Insurance Company's indebtedness to Mrs. Dunlevy) was declared by that Court not to be *in esse;* the Pennsylvania proceedings do not show jurisdiction *in personam*, as it appears therein that Mrs. Dunlevy was personally served with alleged process in a distant state.

4. The argument of the petitioner is based upon the following false assumptions:

a. That the proceedings show that the Insurance Company was indebted to Mrs. Dunlevy which it does not.

b. That property of Mrs. Dunlevy was restrained by the garnishment process which it was not.

c. That the procedure of Pennsylvania as to a rule of interpleader and the service thereof was complied with, which it was not.

d. That there was a judgment entered in the Pennsylvania proceedings of which there was none.

e. That a judgment of discharge of garnishee was *res adjudicata* in an action by the judgment debtor, which it is not in Pennsylvania.

f. That a garnishment proceeding in Pennsylvania is such a continuation of the main action that the jurisdiction therein carries over into the garnishment proceedings, which it does not.

g. That payment of money by a garnishee into a Court which does not obtain jurisdiction over all the claimants to said money, releases said garnishee, which it does not.

Wherefore respondent respectfully submits that the decision and judgment of the District Court and Circuit Court of Appeals be affirmed.

Dated, San Francisco,
February 3, 1916.

FRANK W. TAFT,
CLARENCE COONAN,
NAT SCHMULOWITZ,
Attorneys for Respondent.

NEW YORK LIFE INSURANCE COMPANY *v.* DUNLEVY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 290. Argued May 14, 15, 1916.—Decided June 5, 1916.

A party to an action does not after final judgment still remain in court and subject without further personal service to whatsoever orders may be entered under the title of that cause.

Interpleader proceedings brought by a garnishee are not essential concomitants of the original action in which the judgment was rendered on which the garnishment is based, but are collateral and require personal service on the judgment debtor.

In Pennsylvania, a judgment debtor is not a party to a garnishment proceeding to condemn a claim due him from a third person, nor is he bound by a judgment discharging the garnishee.

Any personal judgment which a state court may render against one not voluntarily submitting to its jurisdiction, and who is not a citizen of the State, nor served with process within its border, no matter what the mode of service, is void because the court has no jurisdiction over his person.

214 Fed. Rep. 1, affirmed.

THE facts, which involve the effect of a garnishee proceeding in one State and pleaded in an action in another State, are stated in the opinion.

Mr. James H. McIntosh, with whom *Mr. E. J. McCutchen*, *Mr. Warren Olney, Jr.*, *Mr. Charles W. Willard* and *Mr. J. M. Mannon, Jr.*, were on the brief, for petitioner.

Mr. Nat Schmulowitz, with whom *Mr. Frank W. Taft* and *Mr. Clarence Coonan* were on the brief, for respondent.

Mr. Justice McReynolds delivered the opinion of the court.

Respondent, Effie J. Gould Dunlevy, instituted this suit in the Superior Court, Marin County, California, January 14, 1910, against petitioner and Joseph W. Gould, her father, to recover $2,479.70, the surrender value of a policy on his life which she claimed had been assigned to her in 1893, and both were duly served with process while in that State. It was removed to the United States District Court, February 16, 1910, and there tried by the judge in May, 1912, a jury having been expressly waived. Judgment for amount claimed was affirmed by the Circuit Court of Appeals. 204 Fed. Rep. 670. 214 Fed. Rep. 1.

The insurance company by an amended answer filed December 7, 1911, set up in defense (1) that no valid assignment had been made, and (2) that Mrs. Dunlevy was concluded by certain judicial proceedings in Pennsylvania wherein it had been garnished and the policy had been adjudged to be the property of Gould. Invalidity of the assignment is not now urged; but it is earnestly insisted that the Pennsylvania proceedings constituted a bar.

In 1907 Boggs & Buhl recovered a valid personal judgment by default, after domiciliary service, against Mrs. Dunlevy, in the Common Pleas Court at Pittsburgh, where she then resided. During 1909, "the tontine dividend period" of the life policy having expired, the insurance

company became liable for $2,479.70 and this sum was claimed both by Gould, a citizen of Pennsylvania, and his daughter, who had removed to California. In November, 1909, Boggs & Buhl caused issue of an execution attachment on their judgment and both the insurance company and Gould were summoned as garnishees. He appeared, denied assignment of the policy and claimed the full amount due thereon. On February 5, 1910,—after this suit was begun in California—the company answered, admitted its indebtedness, set up the conflicting claims to the fund and prayed to be advised as to its rights. At the same time it filed a petition asking for a rule upon the claimants to show cause why they should not interplead and thereby ascertain who was lawfully entitled to the proceeds and further that it might be allowed to pay amount due into court for benefit of proper party. An order granted the requested rule and directed that notice be given to Mrs. Dunlevy in California. This was done, but she made no answer and did not appear. Later the insurance company filed a second petition, and, upon leave obtained thereunder, paid $2,479.70 into court, March 21, 1910. All parties except Mrs. Dunlevy having appeared, a feigned issue was framed and tried to determine validity of alleged transfer of the policy. The jury found, October 1, 1910, there was no valid assignment and thereupon under an order of court the fund was paid over to Gould.

Beyond doubt, without the necessity of further personal service of process upon Mrs. Dunlevy, the Court of Common Pleas at Pittsburgh had ample power through garnishment proceedings to inquire whether she held a valid claim against the insurance company and if found to exist then to condemn and appropriate it so far as necessary to discharge the original judgment. Although herself outside the limits of the State such disposition of the property would have been binding on her. *Chicago,*

R. I. & P. Ry. v. *Sturm*, 174 U. S. 710; *Harris* v. *Balk*, 198 U. S. 215, 226, 227; *Louis. & Nash. R. R.* v. *Deer*, 200 U. S. 176; *Balt. & Ohio R. R.* v. *Hostetter*, 240 U. S. 620; Shinn on Attachment and Garnishment, § 707. See *Brigham* v. *Fayerweather*, 140 Massachusetts, 411, 413. But the interpleader initiated by the company was an altogether different matter. This was an attempt to bring about a final and conclusive adjudication of her personal rights, not merely to discover property and apply it to debts. And unless in contemplation of law she was before the court and required to respond to that issue, its orders and judgments in respect thereto were not binding on her. *Pennoyer* v. *Neff*, 95 U. S. 714; Shinn on Attachment and Garnishment, § 674. See *Cross* v. *Armstrong*, 44 Oh. St. 613, 623, 625.

Counsel maintain that having been duly summoned in the original suit instituted by Boggs & Buhl in 1907 and notwithstanding entry of final judgment therein, "Mrs. Dunlevy was in the Pennsylvania court and was bound by every order that court made whether she remained within the jurisdiction of that court after it got jurisdiction over her person or not"; and hence, the argument is, "When the company paid the money into court where she was it was just the same in legal effect as if it had paid it to her." This position is supposed to be supported by our opinion in *Michigan Trust Co.* v. *Ferry*, 228 U. S. 346, where it is said (p. 353): "If a judicial proceeding is begun with jurisdiction over the person of the party concerned it is within the power of a State to bind him by every subsequent order in the cause. *Nations* v. *Johnson*, 24 How. 195, 203, 204. This is true not only of ordinary actions but of proceedings like the present. It is within the power of a State to make the whole administration of the estate a single proceeding, to provide that one who has undertaken it within the jurisdiction shall be subject to the order of the court in the matter until the adminis-

tration is closed by distribution, and, on the same principle, that he shall be required to account for and distribute all that he receives, by the order of the Probate Court."

Of course the language quoted had reference to the existing circumstances and must be construed accordingly. The judgment under consideration was fairly within the reasonable anticipation of the executor when he submitted himself to the Probate Court. But a wholly different and intolerable condition would result from acceptance of the theory that after final judgment a defendant remains in court and subject to whatsoever orders may be entered under title of the cause. See *Wetmore* v. *Karrick*, 205 U. S. 141, 151; Freeman on Judgments, 4th ed., § 103. The interpleader proceedings were not essential concomitants of the original action by Boggs & Buhl against Dunlevy but plainly collateral and when summoned to respond in that action she was not required to anticipate them. *Smith* v. *Woolfolk*, 115 U. S. 143, 148, 149; *Reynolds* v. *Stockton*, 140 U. S. 254, 269; *Owens* v. *Henry*, 161 U. S. 642, 646; *Hovey* v. *Elliott*, 167 U. S. 409; Freeman on Judgments, 4th ed., § 143.

It has been affirmatively held in Pennsylvania that a judgment debtor is not a party to a garnishment proceeding to condemn a claim due him from a third person and is not bound by a judgment discharging the garnishee (*Ruff* v. *Ruff*, 85 Pa. St. 333); and this is the generally accepted doctrine. Shinn on Attachment and Garnishment, § 725. Former opinions of this court uphold validity of such proceedings upon the theory that jurisdiction to condemn is acquired by service of effective process upon the garnishee.

The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the State, nor served with process within its

borders, no matter what the mode of service, is void, because the court had no jurisdiction over his person. *Pennoyer* v. *Neff, supra;* Freeman on Judgments, 4th ed., § 120a; Black on Judgments, 2d ed., §§ 904 and 905.

We are of opinion that the proceedings in the Pennsylvania court constituted no bar to the action in California and the judgment below is accordingly

Affirmed.